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**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORP. and
 ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-02880-JSC

**DEFENDANT MICROSOFT CORP.'S
 ANSWER AND DEFENSES**

1 Defendant Microsoft Corporation (“Microsoft”) responds separately to the allegations set
 2 forth in the Federal Trade Commission’s (“FTC” or the “Commission”) Complaint for a
 3 Temporary Restraining Order and Preliminary Injunction. Any allegation not specifically and
 4 expressly admitted is denied.

5 INTRODUCTION

6 The FTC asks the Court to do something that has never been done before: enjoin a
 7 vertical merger under Section 13(b) of the FTC Act. The relief the FTC seeks is not only
 8 unprecedented but deal-killing. To our knowledge, *no* unconsummated merger has *ever* survived
 9 a Section 13(b) injunction long enough for the FTC to complete its in-house administrative
 10 adjudication—in which the FTC nearly always rules for itself—and then obtain relief from a
 11 neutral Article III court. Moreover, the FTC’s case is entirely without merit. Rather than inhibit
 12 competition, the merger will make Microsoft a more effective competitor to more successful and
 13 established firms in console, PC, and mobile gaming; it will expand access to Activision content
 14 to platforms that do not currently have it and likely would not receive it absent the merger; and it
 15 will drive investment to new technology and content.

16 This case involves the vertical merger between the third-place manufacturer of gaming
 17 consoles and one of dozens of publishers of popular video games. Microsoft competes in gaming
 18 through its Xbox division (“Xbox”). Since 2001, Xbox has manufactured its Xbox console, and
 19 through that entire two-decade period, Xbox has lagged behind the dominant console makers,
 20 Sony and Nintendo, both globally and in the United States. Xbox also makes games for mobile
 21 devices, such as phones and tablets, but its presence in that market is *de minimis*. Activision is a
 22 video game publisher that produces a wide array of games, including some of the most popular
 23 and profitable mobile games in the world. Microsoft is acquiring Activision to grow its presence
 24 in mobile gaming. For this deal to be profitable, Microsoft will need to make Activision’s
 25 portfolio of gaming titles as widely available as possible, including by continuing to sell its most
 26 popular console game, *Call of Duty*, on the Sony PlayStation. This economic reality is so
 27 apparent that the CEO of Sony accurately remarked that Microsoft’s acquisition of Activision
 28

1 was “not an Xbox exclusivity play at all” and predicted that Sony “will continue to see COD on
2 [PlayStation] for many years to come.”

3 Brushing aside the facts, the law, and the economics, the FTC seeks to block this merger
4 based on a tenuous theory that Microsoft will withhold *Call of Duty* from competitors. Doing so
5 would be economically irrational for Microsoft, but regardless, Microsoft cannot do so. After
6 agreeing to acquire Activision, Microsoft entered into agreements to bring *Call of Duty* to
7 Nintendo (which has not had *Call of Duty* on its consoles for over a decade) and to five leading
8 cloud gaming services (something Activision has consistently refused to do) for ten years. It has
9 made the same offer to Sony, but Sony has refused. Nonetheless, Microsoft has committed to the
10 public, its shareholders, and now the Court that it will continue to sell *Call of Duty* on
11 PlayStation if Sony permits it to do so.

12 In all events, even if Microsoft had both the incentive and the ability to withhold *Call of*
13 *Duty* from Sony, doing so would not constitute a “substantial lessening of competition.” The
14 acquisition of a single game by the third-place (out of three) console manufacturers cannot upend
15 this highly competitive market. Exclusive titles are common in the gaming industry; indeed, until
16 relatively recently, most games were available only on a single platform. To this day, Sony and
17 Nintendo both have vastly larger libraries of exclusive content than Xbox, including
18 commercially and critically successful franchise like *The Last of Us*, *God of War*, *Spiderman*,
19 and *Mario*. Sony in fact has *eight* exclusive titles for every one Xbox exclusive, and Sony has
20 increasingly used its dominant market position to pay third-party publishers a premium to keep
21 their games off Xbox entirely. Although *Call of Duty* is popular, it is not essential content. The
22 vast majority of gamers do not play *Call of Duty* at all, and over the past six years, it has been the
23 most played game by month in just two months. Even if Microsoft made *Call of Duty* an Xbox
24 exclusive (which it cannot and will not do), that would do nothing to upset Sony’s dominance in
25 the console market—even if every single significant *Call of Duty* gamer on PlayStation switched
26 to Xbox, Sony would *still* be the number one console.

The FTC's theory of harm to the putative markets for subscription library and cloud gaming services is even weaker. At the outset, neither service is a standalone market; each is an emerging alternative to existing products in the gaming industry—specifically, to buy-to-play titles (subscription libraries) and to consoles (cloud gaming services). Currently, Activision content is not available either on subscription libraries or on cloud platforms, and Activision has no intention as a separate company to make them available for an array of technological and financial reasons. Microsoft, by contrast, has committed to bringing Activision content to its own subscription library and to third-party cloud gaming platforms. Thus, the undisputed evidence will show that, across every putative market identified by the FTC, the result of the merger will be more competition and broader access to Activision content:

	Without Merger	With Merger
Consoles	<i>COD</i> available on Xbox and PlayStation only	<i>COD</i> available on Xbox, Switch, and PlayStation
Subscription	<i>COD</i> not available on any subscription service	<i>COD</i> available on Game Pass on a day-and-date basis
Cloud Gaming	<i>COD</i> not available on any cloud gaming platform	<i>COD</i> available on Game Pass Ultimate, Boosteroid, Nvidia GeForce NOW, EE Limited, NWare, and Ubitus

Ultimately, the FTC has no grounds to challenge this merger, which will increase competition and expand access across multiple sectors of the gaming market. The FTC's request for injunctive relief should be denied and its complaint should be dismissed.

ANSWER

The Commission's unnumbered introductory paragraphs characterize this action and assert legal arguments and conclusions to which no response is required. To the extent such a response is required, Microsoft denies the allegations in the Commission's unnumbered introductory paragraphs.

NATURE OF THE CASE¹

1. **ALLEGATION:** Microsoft and Sony control the market for high-performance video game consoles. The number of independent companies capable of developing standout video games for those consoles has contracted, with only a small group of firms commanding that space today. Microsoft now proposes to acquire Activision, one of the most valuable of those developers, in a vertical merger valued at nearly \$70 billion (the “Proposed Acquisition”²) that will increase Microsoft’s already considerable power in video games. If consummated, the Proposed Acquisition would be the largest in the history of the video game industry and the largest in Microsoft’s history. The Proposed Acquisition would continue Microsoft’s pattern of taking control of valuable gaming content. With control of Activision’s content, Microsoft would have the ability and increased incentive to withhold or degrade Activision’s content in ways that substantially lessen competition—including competition on product quality, price, and innovation. This loss of competition would likely result in significant harm to consumers in multiple markets at a pivotal time for the industry.

ANSWER: Paragraph 1 purports to state conclusions of law to which no response is required. To the extent a response is required, Microsoft denies those allegations, except that Microsoft admits that it seeks to acquire Activision for \$68.7 billion, and that this would be the highest numerical dollar amount that Microsoft will have paid for an acquisition in its history. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the relative size of this acquisition within the gaming industry. Microsoft denies the remaining allegations contained in Paragraph 1.

¹ Use of headings and subheadings from the Complaint is solely for the benefit of the reader. Microsoft does not interpret the headings and subheadings throughout the Complaint as well-pleaded allegations to which any response is required. To the extent such a response is required, Microsoft denies all allegations in the headings and subheadings of the Complaint.

² Use of certain terms or phrases defined in the Complaint is not an acknowledgement or admission of any characterization the Commission may ascribe to the defined terms. Unless otherwise defined, capitalized terms shall refer to the capitalized terms defined in the Complaint, but any such use is not an acknowledgement or admission of any characterization the Commission may ascribe to the capitalized terms.

2. **ALLEGATION:** Microsoft, one of only two manufacturers of high-performance video game consoles, develops and sells Xbox gaming consoles. Microsoft is vertically integrated: through its in-house game studios, it develops and publishes popular video game titles such as Halo. Such in-house games are known as “first-party” titles in the industry. Microsoft also offers a leading video game subscription service, Xbox Game Pass, for which customers pay a monthly fee to access a library of hundreds of first- and third-party video games for console or personal computer (“PC”). The top tier of Xbox Game Pass, called Xbox Game Pass Ultimate, includes “cloud gaming” functionality that enables subscribers to stream certain games, as opposed to downloading games locally, and then to play those games across a variety of devices including consoles, PCs, tablets, and mobile phones.

ANSWER: Microsoft admits that Xbox, a gaming division of Microsoft, develops and sells video game consoles and video games (including the video game, *Halo*); that games created in-house are sometimes referred to as “first-party” titles; that Xbox offers a multigame subscription service, Xbox Game Pass, which provides subscribers with access to a catalog of hundreds of video games to play on console or PC; and that the Xbox Game Pass Ultimate tier offers “cloud gaming” functionality allowing subscribers to stream certain games for play across a variety of devices including consoles, PCs, tablets, and mobile phones. Microsoft denies the remaining allegations contained in Paragraph 2.

3. **ALLEGATION:** Activision develops and publishes high-quality video games for multiple devices, including video game consoles, PCs, and mobile devices. Activision’s games include high-quality games that are commonly referred to in the industry as “AAA” titles. AAA games are costly to produce because of the creative talent, budgets, and time required for development. Gamers highly anticipate the release of AAA games.

ANSWER: Microsoft admits that Activision develops and publishes video games for multiple devices, including video game consoles, PCs, and mobile devices and that Activision’s games include high-quality games. Microsoft avers that the term “AAA” lacks a defined meaning in the industry. Microsoft denies the remaining allegations contained in Paragraph 3.

1 4. **ALLEGATION:** Activision produces some of the most iconic video game titles,
2 including several leading AAA franchises. For example, Activision develops the popular
3 franchises Diablo and Overwatch and the marquee franchise Call of Duty.

4 **ANSWER:** Microsoft admits that Activision develops *Diablo*, *Overwatch*, and *Call of*
5 *Duty*. Microsoft denies the remaining allegations contained in Paragraph 4.

6 5. **ALLEGATION:** The Diablo and Overwatch AAA franchises are among several
7 Activision franchises that have individually earned more than \$1 billion in lifetime revenues.
8 Overwatch just released a successful new title, Overwatch 2, available for play on multiple
9 gaming consoles and PCs. Diablo, a long-running franchise first introduced in the 1990s,
10 launched a highly anticipated new title, Diablo IV, on June 6, 2023. An Activision Press Release
11 noted that Diablo IV quickly became its Blizzard division's "fastest-selling game of all time,
12 with Blizzard's highest pre-launch unit sales ever on both console and PC. In the four days since
13 early access started on June 1, Diablo IV has been played for 93 million hours, or over 10,000
14 years --- the equivalent playing 24 hours a day since the beginning of human civilization."

15 **ANSWER:** Microsoft admits that *Overwatch 2* was released in 2022 and is available to
16 play on Microsoft's Xbox Series X and Series S consoles, Nintendo Switch, Sony PlayStation 5,
17 and PCs; and that *Diablo IV* was launched on June 6, 2023. Microsoft avers that it lacks
18 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
19 the lifetime revenues of the *Diablo* and *Overwatch* game titles, when *Diablo* was first
20 introduced, whether *Diablo IV*'s release was highly anticipated, and what statements Activision
21 may have made about that release. Microsoft denies the remaining allegations contained in
22 Paragraph 5.

23 6. **ALLEGATION:** Activision and industry participants also recognize Call of Duty
24 as Activision's "key product franchise." Call of Duty was originally launched in 2003, and
25 Activision releases new titles for the franchise on an annual basis. Activision allocates
26 substantial resources to the franchise. As many as four primary development studios are devoted
27 to it at any one time and its budget is significantly larger than other AAA titles.

1 **ANSWER:** To the extent the Complaint is quoting from documents, Microsoft
2 respectfully refers the Court to the documents for an accurate and complete statement of their
3 contents. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations concerning industry perceptions of *Call of Duty* and *Call of Duty*'s
5 original release date; or as to the truth of the allegations concerning *Call of Duty*'s launch and
6 typical release schedule and the resources and budget Activision allocates to *Call of Duty*,
7 including the number of studios that work on *Call of Duty*. Microsoft denies the remaining
8 allegations contained in Paragraph 6.

9 7. **ALLEGATION:** It is one of the most successful console-game franchises ever.
10 From its launch in 2003 up through 2020, it generated \$27 billion in revenues. Call of Duty also
11 has a massive following, with 150 million monthly active users ("MAU") in 2020, according to
12 an Activision strategy document. Its loyal fanbase and enduring appeal have made it particularly
13 valuable, influencing gamer engagement and gaming product adoption. The franchise has
14 achieved sustained dominance over the past decade, with Call of Duty titles comprising 10 of the
15 top 15 console games sold between 2010–2019. No other franchise had more than one title in the
16 top 15. Call of Duty has continued to top the charts in 2020 and 2021, and its latest installment,
17 Modern Warfare II, amassed more than \$1 billion in sales within just ten days of its release. The
18 previous franchise record was held by Call of Duty: Black Ops II, which took 15 days to hit the
19 \$1 billion mark.

20 **ANSWER:** To the extent the Complaint is referencing documents, Microsoft respectfully
21 refers the Court to the documents for an accurate and complete statement of their contents.
22 Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth
23 of allegations concerning *Call of Duty*'s revenues, sales, and monthly active users. Microsoft
24 denies the remaining allegations contained in Paragraph 7.

25 8. **ALLEGATION:** Activision's content is extremely important for, and drives
26 adoption of, video game consoles. Given their immense popularity, Activision's titles are of
27 particular importance to console makers, including Microsoft's competition.
28

1 **ANSWER:** Microsoft denies the allegations contained in Paragraph 8.

2 9. **ALLEGATION:** Microsoft produces its own first-party video game titles.
3 Microsoft has acquired over ten third-party studios and their titles in recent years to expand its
4 offerings. Microsoft has frequently made those acquired titles exclusive to its own consoles
5 and/or subscription services, eliminating the opportunity for consumers to play those titles on
6 rival products or services. By taking games exclusive, Microsoft strengthens the position of its
7 console and subscription service products relative to competitors.

8 **ANSWER:** Microsoft admits that it produces its own first-party video game titles; and
9 that since 2018, it has acquired 8 companies, one of which operates multiple studios. Microsoft
10 denies the remaining allegations contained in Paragraph 9.

11 10. **ALLEGATION:** The Proposed Acquisition is reasonably likely to substantially
12 lessen competition or tend to create a monopoly in multiple markets because it will create a
13 combined firm with the ability and increased incentive to use its control of Activision titles to
14 disadvantage Microsoft's competitors. The Proposed Acquisition also may accelerate an ongoing
15 trend towards vertical integration and consolidation in, and raise barriers to entering, the relevant
16 markets.

17 **ANSWER:** Paragraph 10 purports to state conclusions of law to which no response is
18 required. To the extent a response is required to these conclusions, Microsoft denies the
19 allegations contained in Paragraph 10.

20 11. **ALLEGATION:** Microsoft's ownership of Activision would provide Microsoft
21 with the ability to withhold or degrade Activision content through various means, including
22 manipulating Activision's pricing, degrading game quality or player experience on rival
23 offerings, changing the terms and timing of access to Activision's content, or withholding
24 content from competitors entirely.

25 **ANSWER:** Microsoft denies the allegations in Paragraph 11.

26 12. **ALLEGATION:** Microsoft's past conduct provides a preview of the combined
27 firm's likely plans if it consummates the Proposed Acquisition, despite any assurances the
28

1 company may offer regarding its plans. In March 2021, Microsoft acquired ZeniMax Media Inc.
 2 (“ZeniMax”), the parent company of the well-known game developer and publisher Bethesda
 3 Softworks LLC (“Bethesda”). Microsoft assured the European Commission (“EC”) during its
 4 antitrust review of the ZeniMax purchase that Microsoft would not have the incentive to
 5 withhold ZeniMax titles from rival consoles. But, shortly after the EC cleared the transaction,
 6 Microsoft made public its decision to make several of the newly acquired ZeniMax titles,
 7 including *Starfield*, *Redfall*, and *Elder Scrolls VI*, Microsoft exclusives.

8 **ANSWER:** Microsoft admits that it acquired ZeniMax, the parent company of several
 9 studios, in 2021; that following Microsoft’s acquisition of ZeniMax, several ZeniMax titles have
 10 been released on PlayStation, including two new ZeniMax titles that were exclusive to
 11 PlayStation upon release, as well as several new updates of *Elder Scrolls Online* and *Fallout 76*;
 12 that *Redfall* was released on Xbox, PC, and Game Pass day-and-date; that *Mighty DOOM*, a
 13 mobile game, was released on iPhone and Android; and that some future ZeniMax games may
 14 only be available on Xbox, PC, and Game Pass when they are initially released. Microsoft
 15 further avers that this approach is consistent with Microsoft’s representations to the European
 16 Commission (“EC”), as the EC has publicly stated. Microsoft denies the remaining allegations
 17 contained in Paragraph 12.

18 13. **ALLEGATION:** Today, Activision touts that it is “platform agnostic” and seeks
 19 to offer its games wherever gamers want to be playing them. It has an incentive to offer its titles
 20 broadly. Microsoft’s ownership of Activision’s content would alter that dynamic. As Microsoft
 21 seeks to increase its profits from the lucrative video game industry, the Proposed Acquisition
 22 will increase Microsoft’s incentive to withhold Activision content from, or degrade Activision
 23 content on, consoles and subscription services that compete with Xbox consoles and Xbox Game
 24 Pass. Such conduct would be reasonably likely to substantially lessen competition and harm
 25 gamers in the United States.

26 **ANSWER:** Paragraph 13 purports to state conclusions of law to which no response is
 27 required. To the extent a response is required to these conclusions, Microsoft denies those
 28

1 allegations. To the extent the Complaint is quoting from one or more unidentified sources,
2 Microsoft respectfully refers the Court to any such source for an accurate and complete statement
3 of its contents. Microsoft avers that it lacks knowledge or information sufficient to form a belief
4 as to the truth of the allegations concerning Activision's incentives and business strategy.
5 Microsoft denies the remaining allegations contained in Paragraph 13.

6 14. **ALLEGATION:** These effects are likely to be felt throughout the video gaming
7 industry. The Proposed Acquisition is reasonably likely to substantially lessen competition
8 and/or tend to create a monopoly in both well-developed and new, burgeoning markets,
9 including high-performance consoles, multi-game content library subscription services, and
10 cloud gaming subscription services.

11 **ANSWER:** Paragraph 14 purports to state conclusions of law to which no response is
12 required. To the extent a response is required to these conclusions, Microsoft denies the
13 allegations contained in Paragraph 14.

14 15. **ALLEGATION:** Microsoft cannot show cognizable, merger-specific efficiencies
15 that would offset the reasonably probable and substantial competitive harm resulting from the
16 Acquisition.

17 **ANSWER:** Paragraph 15 purports to state conclusions of law to which no response is
18 required. To the extent a response is required to these conclusions, Microsoft denies the
19 allegations contained in Paragraph 15.

20 16. **ALLEGATION:** On December 8, 2022, the Commission found reason to believe
21 that the Acquisition would substantially lessen competition in violation of Section 7 of the
22 Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, and commenced an
23 administrative proceeding on the antitrust merits of the Proposed Acquisition. The administrative
24 proceeding provides a forum for fact discovery, which closed on April 7, 2023, after all parties
25 issued document subpoenas, requests for admission, interrogatories, and conducted over thirty
26 depositions of party and non-party witnesses. Pretrial disclosures are underway and the
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28

1 evidentiary hearing is scheduled to begin before an Administrative Law Judge (“ALJ”) on
2 August 2, 2023, with up to 210 hours of live testimony permitted by rule. See 16 C.F.R. § 3.41.

3 **ANSWER:** Paragraph 16 purports to state conclusions of law to which no response is
4 required. To the extent a response is required to these conclusions, Microsoft denies the
5 allegations contained in Paragraph 16, except it admits that the FTC commenced an
6 administrative proceeding against Microsoft in December 2022; that fact discovery closed in
7 April 2023; that pretrial disclosures are underway; and that an evidentiary hearing is scheduled to
8 begin on August 2, 2023. Microsoft denies the remaining allegations contained in Paragraph 16.

9 17. **ALLEGATION:** A temporary restraining order is necessary to prevent Microsoft
10 from consummating the Proposed Acquisition until after the fifth business day after this Court
11 rules on the Commission’s motion for a preliminary injunction pursuant to Section 13(b), or until
12 after the date set by the District Court, whichever is later. Such a temporary restraining order is
13 necessary to preserve the status quo and protect competition while the Court considers the
14 Commission’s application for a preliminary injunction.

15 **ANSWER:** Paragraph 17 purports to state conclusions of law to which no response is
16 required. To the extent a response is required to these conclusions, Microsoft denies the
17 allegations contained in Paragraph 17.

18 18. **ALLEGATION:** Preliminary injunctive relief is similarly necessary to preserve
19 the status quo and protect competition during the Commission’s ongoing administrative
20 proceeding. Allowing the Proposed Acquisition to proceed while the Commission is assessing
21 whether it violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and is an unfair
22 method of competition that violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45,
23 would undermine the Commission’s ability to order any necessary relief.

24 **ANSWER:** Paragraph 18 purports to state conclusions of law to which no response is
25 required. To the extent a response is required to these conclusions, Microsoft denies the
26 allegations contained in Paragraph 18.

JURISDICTIONAL STATEMENT

A. Jurisdiction

19. **ALLEGATION:** This Court’s jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and under 28 U.S.C. §§ 1331, 1337, and 1345. This is a civil action arising under the Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by an Act of Congress to bring this action.

ANSWER: Paragraph 19 purports to state conclusions of law to which no response is required.

20. **ALLEGATION:** Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond. . . .

ANSWER: Paragraph 20 purports to state conclusions of law to which no response is required.

21. **ALLEGATION:** Microsoft and their relevant operating entities and subsidiaries are, and at all relevant times have been, engaged in activities affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

ANSWER: Paragraph 21 purports to state conclusions of law to which no response is required.

B. Venue

22. **ALLEGATION:** Personal jurisdiction exists where service is effected pursuant to a federal statute. Fed. R. Civ. P. 4(k)(1)(C). The FTC Act § 13(b), 15 U.S.C. § 53(b), authorizes nationwide service of process. Microsoft is therefore subject to personal jurisdiction in the Northern District of California. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b) and (c), as well as under 15 U.S.C. § 53(b) (“Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of Title 28.”)

ANSWER: Paragraph 22 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies the allegations contained in Paragraph 22.

C. Assignment to the San Francisco Division

23. **ALLEGATION:** Assignment to the San Francisco Division is proper. A related proceeding regarding the Proposed Acquisition was filed in the San Francisco Division: *DeMartini v. Microsoft Corp.*, No. C-22-08991-JSC (N.D. Cal.).

ANSWER: Paragraph 23 purports to state conclusions of law to which no response is required.

THE PARTIES AND THE PROPOSED ACQUISITION

24. **ALLEGATION:** Plaintiff, the Commission, is an administrative agency of the United States government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 et seq., with its principal offices at 600 Pennsylvania Avenue, N.W., Washington,

1 D.C. 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia*,
2 Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

3 **ANSWER:** Microsoft admits the allegations contained in Paragraph 24.

4 25. **ALLEGATION:** Defendant Microsoft is a publicly traded technology company
5 incorporated in the State of Washington with headquarters in Redmond, Washington. Microsoft
6 sells software, services, and devices across the technology industry and is among the most
7 valuable companies in the world. Microsoft's gaming division produces Xbox hardware and
8 Xbox content and services. Its total gaming revenues in FY2022 were over \$16 billion.
9 Microsoft's total revenues in FY2022 were over \$198 billion.

10 **ANSWER:** Microsoft admits that it is a publicly traded company incorporated in
11 Washington with headquarters in Redmond, Washington; that it sells software, services, and
12 devices across the technology industry; that its gaming division, Xbox, produces specialized
13 Xbox hardware and sells Xbox content and services; and that for fiscal year 2022, Microsoft's
14 gaming revenue was \$16.23 billion and total revenue was \$198.27 billion. Microsoft denies the
15 remaining allegations contained in Paragraph 25.

16 26. **ALLEGATION:** Defendant Activision is a publicly traded company,
17 incorporated in the State of Delaware with headquarters in Santa Monica, California. Activision
18 develops and publishes video games for consoles, PCs, and mobile devices. Activision's
19 revenues in FY2021, its most recently reported fiscal year, were \$8.8 billion.

20 **ANSWER:** Microsoft admits that Activision is a publicly traded company, incorporated
21 in the State of Delaware with headquarters in Santa Monica, California; and that Activision
22 develops and publishes video games for consoles, PCs, and mobile devices. Microsoft avers that
23 it lacks knowledge or information sufficient to form a belief as to the truth of the remaining
24 allegations contained in Paragraph 26.

25 27. **ALLEGATION:** Microsoft entered into an Agreement and Plan of Merger with
26 Activision on January 18, 2022, for an all-cash purchase price of \$95 per Activision share and a
27 total estimated value of \$68.7 billion.

ANSWER: Microsoft admits the allegations contained in Paragraph 27.

28. **ALLEGATION:** Unless temporarily restrained and preliminarily enjoined by this Court, Defendants have represented that they may consummate the Proposed Acquisition at any time after June 15, 2023.

ANSWER: Microsoft admits that it represented that it would not consummate the Proposed Acquisition up through June 15, 2023. Microsoft otherwise denies the allegations in Paragraph 28.

BACKGROUND

29. **ALLEGATION:** Activision's gaming content is extremely important in a gaming industry where content availability shapes gamers' decisions about which video game consoles and services to purchase. If the Proposed Acquisition is allowed to proceed, Microsoft would gain control of Activision's content and have the ability and increased incentive to withhold or degrade Activision's content, which is reasonably likely to reduce competition and cause a number of harmful outcomes, including dampened innovation, diminished consumer choice, higher prices and/or lower quality products, and harm to the millions of Americans who benefit from competition in video game consoles and subscription services.

ANSWER: Paragraph 29 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 29.

30. **ALLEGATION:** Today, gaming is the largest category in the entertainment industry, with revenues that far exceed those of both the film and music industries. This year, the gaming industry is expected to be worth more than \$170 billion in global revenues, five times greater than global movie box office revenues.

ANSWER: Microsoft admits that gaming is a part of the entertainment industry; that in 2020 the gaming industry was worth \$165 billion, with \$85 billion coming from mobile gaming, \$40 billion coming from PC gaming, \$33 billion coming from console gaming, and the remaining revenue coming from cloud, VR, handheld, and arcade gaming. Microsoft lacks

1 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
 2 the total revenues of the gaming industry in 2023. Microsoft denies the remaining allegations
 3 contained in Paragraph 30.

4 31. **ALLEGATION:** Gaming’s unrivaled popularity among consumers is expected to
 5 continue. Microsoft projects global gaming revenues to grow to \$500 billion in annual sales by
 6 2030. Microsoft also expects the number of gamers worldwide to increase significantly,
 7 expanding by another 1.5 billion players and reaching 50% of the global population over the next
 8 eight years.

9 **ANSWER:** Microsoft admits the allegations contained in Paragraph 31.

10 32. **ALLEGATION:** Video game content and services are generally available on a
 11 variety of devices, including video game consoles that are predominantly used for playing video
 12 games; PCs, including general purpose PCs as well as high-performance gaming PCs configured
 13 to play computationally demanding games; and mobile devices.

14 **ANSWER:** Microsoft admits that video game content can be played on consoles, PCs,
 15 and mobile devices. Microsoft denies the remaining allegations contained in Paragraph 32.

16 33. **ALLEGATION:** Consumers purchase consoles based on the technological
 17 capability of the console, the price, and the games available for that specific console, among
 18 other factors.

19 **ANSWER:** Microsoft admits that consumers purchase consoles for a variety of reasons.
 20 Microsoft denies the remaining allegations contained in Paragraph 33.

21 **II. Consoles³**

22 34. **ALLEGATION:** For gamers who play games on gaming consoles today, the
 23 most popular options, Microsoft’s Xbox, Sony’s PlayStation, and Nintendo’s Switch, come from
 24 _____

25 ³ Plaintiff’s Complaint titled this sub-section as “II” despite this sub-section being the first numbered sub-section
 26 under the “BACKGROUND” header. For ease of reference, Microsoft conforms all of its answer headings to the
 27 corresponding headings in Plaintiff’s Complaint.
 28

1 the same trio of companies that have been manufacturing consoles for decades with no
2 meaningful new competition.

3 **ANSWER:** Microsoft admits that the most popular gaming consoles include Sony's
4 PlayStation, Nintendo's Switch, and Microsoft's Xbox. Microsoft denies the remaining
5 allegations contained in Paragraph 34.

6 35. **ALLEGATION:** Since the 1970s, competing video game console makers have
7 periodically released consoles featuring the latest technological advances, with a new generation
8 of consoles released approximately every five to ten years. Within the video game industry,
9 competition for sales and technological supremacy is commonly referred to as "the console
10 wars."

11 **ANSWER:** Microsoft admits that there has been vigorous competition in the gaming
12 industry for decades, including competition among video game console makers. Microsoft avers
13 that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations
14 concerning the views of unidentified industry participants. To the extent the Complaint is
15 quoting from documents, Microsoft respectfully refers the Court to the documents for an
16 accurate and complete statement of their contents. Microsoft denies the remaining allegations
17 contained in Paragraph 35.

18 36. **ALLEGATION:** Of these three console makers, PlayStation and Xbox compete
19 in a high-performance segment that includes only the most technologically advanced and capable
20 consoles. In November 2020, both Microsoft and Sony launched their current generation of
21 consoles, the Xbox Series X and Series S consoles (collectively, "Xbox Series X|S") and the
22 PlayStation 5 and PlayStation 5 Digital Edition consoles (collectively, "PS5"), respectively.
23 Xbox Series X|S and PS5 consoles are the only high-performance consoles available today, and
24 are considered to be in the ninth generation of gaming consoles. In contrast, Nintendo's most
25 recent console—the Nintendo Switch—is not a ninth-generation gaming console. The Nintendo
26 Switch was released in 2017, in the latter half of the eighth generation of gaming consoles, which
27 had begun in approximately 2013. The Nintendo Switch ("Switch") also has lower
28

1 computational performance, more in line with Microsoft's and Sony's eighth generation
2 consoles.

3 **ANSWER:** Microsoft admits that Xbox, Sony, and Nintendo all currently offer
4 competing gaming consoles; that Xbox and Sony released their most recent consoles (the Xbox
5 Series X|S and the PlayStation 5, respectively) in 2020; and that Nintendo released its most
6 recent console (the Nintendo Switch) in 2017. Microsoft denies the remaining allegations
7 contained in Paragraph 36.

8 37. **ALLEGATION:** The Xbox Series X|S are two ninth-generation Xbox consoles
9 offered by Microsoft. The Series X is a more powerful console while the Series S is more
10 affordable. Together, these consoles provide Microsoft's "flagship gaming experience."

11 **ANSWER:** Microsoft admits that the Xbox Series X|S are two Xbox consoles offered by
12 Microsoft; that the Xbox Series X is the faster, more powerful model; and that the Xbox Series S
13 is a simpler and more affordable model. To the extent the Complaint is quoting from documents,
14 Microsoft respectfully refers the Court to the documents for an accurate and complete statement
15 of their contents. Microsoft denies the remaining allegations contained in Paragraph 37.

16 38. **ALLEGATION:** Microsoft closely tracks the performance of its Xbox consoles
17 relative to Sony's PlayStation consoles. For example, in FY2022, the first full year that Xbox
18 Series X|S consoles were available, one of Microsoft's key metrics for evaluating success was
19 "% Market Share of Xbox Series Consoles vs. PlayStation 5." In internal communications,
20 Microsoft executives regularly discuss Xbox consoles share relative to the PS5 console.

21 **ANSWER:** Microsoft admits that Microsoft tracks the performance of its Xbox consoles
22 relative to other gaming consoles on the market. To the extent the Complaint is quoting from
23 documents, Microsoft respectfully refers the Court to the documents for an accurate and
24 complete statement of their contents. Microsoft denies the remaining allegations contained in
25 Paragraph 38.

1 39. **ALLEGATION:** Xbox Series X|S consoles have been a commercial success. In a
2 July 26, 2022 earnings call, Microsoft CEO Satya Nadella announced that the company “ha[d]
3 been the market leader in North America for three quarters in a row among next gen consoles.”

4 **ANSWER:** To the extent the Complaint is quoting from or characterizing statements
5 made during an earnings call, Microsoft respectfully refers the Court to a transcript or recording
6 of the call for an accurate and complete statement of its contents. Microsoft denies the remaining
7 allegations contained in Paragraph 39.

8 40. **ALLEGATION:** The Xbox Series X|S and PS5 consoles are “roughly
9 comparable” from a broad consumer perspective, in a number of technical specifications,
10 including offering similar graphics, user experiences, and hardware features. In addition, the
11 Xbox Series X and PlayStation 5 are sold at the same price, while the Series S offers lower
12 performance and is sold at a lower price.

13 **ANSWER:** Microsoft admits that the Xbox Series S console is less expensive than the
14 Xbox Series X console and the PlayStation 5 console. To the extent the Complaint is quoting
15 from documents, Microsoft respectfully refers the Court to the documents for an accurate and
16 complete statement of their contents. Microsoft denies the remaining allegations contained in
17 Paragraph 40.

18 41. **ALLEGATION:** Other consoles lack the high performance of the Xbox Series
19 X|S and PS5 consoles. For example, the Nintendo Switch, which is designed to allow portable,
20 handheld use, necessarily sacrifices computing power, which leaves it unable to play certain
21 games that require more advanced graphic processing. Retailing at \$299.99, the Nintendo Switch
22 is also less expensive than the Xbox Series X and PlayStation 5 consoles, both priced at \$499.99.
23 While the Xbox Series S had the same retail price at launch as the Nintendo Switch, the
24 graphical and processing capabilities of the Series S are much more aligned with the Xbox Series
25 X and PS5 consoles. The Xbox Series S enables gamers to play the same video games as the
26 Xbox Series X, both of which offer more graphically advanced gameplay than on the Nintendo
27 Switch.

1 **ANSWER:** Microsoft admits that different consoles have different technical
2 specifications, including varied graphical processing capabilities; that the Nintendo Switch
3 console allows portable, handheld use; and that the Nintendo Switch console and Xbox Series S
4 console are less expensive than the Xbox Series X console and the PlayStation 5 console.
5 Microsoft denies the remaining allegations contained in Paragraph 41.

6 **III. Gaming Content**

7 **A. Multi-Game Content Library Subscription Services**

8 42. **ALLEGATION:** For the last several decades, gamers have purchased games
9 through a “buy-to-play” model: either purchasing physical copies of games or, more prevalent
10 today, purchasing digital copies of individual games that gamers download to their gaming
11 console, PC, or other device.

12 **ANSWER:** Microsoft admits that gamers have purchased and continue to purchase
13 games through a buy-to-play model, purchasing either physical or digital copies of individual
14 games for play on gaming consoles, PCs, or other devices. Microsoft denies the remaining
15 allegations contained in Paragraph 42.

16 43. **ALLEGATION:** Recent years, however, have seen the expansion of a
17 subscription model. Multigame content library subscription services allow gamers to access a
18 library of games for a fixed monthly or yearly fee. Microsoft’s multi-game content library
19 subscription service, Xbox Game Pass, launched in 2017, rapidly grew to 10 million subscribers
20 by 2020 and in 2022 announced it had grown to 25 million subscribers.

21 **ANSWER:** Microsoft admits that multigame subscription services generally allow
22 gamers to access a catalog of games for a recurring fee; that Microsoft launched its own
23 multigame subscription service, Xbox Game Pass, in 2017; and that other companies have also
24 launched multigame subscription services in recent years. Microsoft further admits that Xbox
25 Game Pass had 10 million subscribers in 2020 and 25 million subscribers in 2022. Microsoft
26 denies the remaining allegations contained in Paragraph 43.

1 44. **ALLEGATION:** Xbox Game Pass provides subscribers with unlimited access to
2 a library of over 300 first- and third-party games at no additional cost. The service is priced at
3 \$9.99 per month for gamers who seek to download games to play solely on an Xbox console or
4 solely on a PC. The higher tiered service, Xbox Game Pass Ultimate, priced at \$14.99 per month,
5 allows gamers to download games for play on either an Xbox console or a PC, and additionally
6 enables gamers to stream games from an off-site server to any web-enabled local device that can
7 access Game Pass (e.g., an Xbox console, PC, mobile device, or smart TV).

8 **ANSWER:** Microsoft admits that Xbox Game Pass is a multigame subscription service
9 that provides subscribers with access to a rotating catalog of hundreds of games. Microsoft
10 further admits that there are three Game Pass offerings: a “Console” offering that allows
11 subscribers to download-to-play a catalog of console games on Xbox; a “PC” offering that
12 allows subscribers to download-to-play a catalog of PC games on PC; and an “Ultimate” version
13 that provides additional features, including the ability to stream a selection of games from the
14 cloud to various devices. Microsoft denies the remaining allegations contained in Paragraph 44.

15 45. **ALLEGATION:** Sony also offers a multi-game content library subscription
16 service, PlayStation Plus, which at certain tiers is comparable to Xbox Game Pass. The lower
17 comparable tier, PlayStation Plus Extra, priced at \$14.99 per month, provides access to a library
18 of hundreds of games that can be played on PlayStation consoles as well as online multiplayer
19 access, discounts on other games, and cloud storage. The higher comparable tier, PlayStation
20 Plus Premium, priced at \$17.99 per month, provides access to an even larger library of games
21 that can be played on PlayStation, along with cloud streaming.

22 **ANSWER:** Microsoft admits that Sony offers a multigame subscription service known as
23 PlayStation Plus that, like Game Pass, offers multiple tiers of pricing, including a top tier that is
24 reported to provide cloud streaming capabilities. Microsoft avers that it lacks knowledge or
25 information sufficient to form a belief as to the truth of the allegations concerning the other
26 features and game offerings available on PlayStation Plus, as well as the pricing of this
27 subscription service. Microsoft denies the remaining allegations contained in Paragraph 45.

1 **46. ALLEGATION:** In addition to Sony’s PlayStation Plus Extra and Premium,
 2 other multi-game content library subscription services include EA Play and Ubisoft+. EA Play,
 3 starting at \$4.99 per month, and Ubisoft+, starting at \$14.99 per month, each offer access only to
 4 content from the respective publishers, Electronic Arts Inc. (“EA”) and Ubisoft Entertainment
 5 SA (“Ubisoft”).

6 **ANSWER:** Microsoft admits that EA Play and Ubisoft+ are other multigame
 7 subscription services. Microsoft avers that they lack knowledge or information sufficient to form
 8 a belief as to the truth of the allegations concerning the game offerings of EA Play and Ubisoft+,
 9 as well as the pricing of these subscription services. Microsoft denies the remaining allegations
 10 contained in Paragraph 46.

11 **B. Cloud Gaming Subscription Services**

12 **47. ALLEGATION:** Today, video game software typically runs locally on the
 13 player’s gaming device. Recently, however, cloud gaming subscription services have been
 14 introduced that allow players to stream games that run on remote hardware without downloading
 15 the game locally. The primary processing for the game occurs in off-site datacenters and a live
 16 feed of the game is streamed to the player’s device.

17 **ANSWER:** Microsoft admits that video games are typically downloaded to a device and
 18 played locally; and that at least since 2013, companies have also offered cloud gaming services
 19 that allow players to play games without downloading them locally, in limited circumstances, by
 20 streaming games to compatible devices via remote servers. Microsoft avers that it lacks
 21 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
 22 the features available on cloud gaming services other than those offered by Xbox Cloud Gaming.
 23 Microsoft denies the remaining allegations contained in Paragraph 47.

24 **48. ALLEGATION:** Microsoft touts numerous benefits of cloud gaming to
 25 customers. Cloud gaming enables gamers to begin playing a game in seconds, rather than waiting
 26 for games to download or update, and streaming rather than downloading avoids burdening the
 27 storage limits on a gaming device. Cloud gaming also broadens access to gaming by expanding
 28

1 the universe of devices that can play games. Today, cloud gaming subscription services are
2 available on consoles, Windows PC, Mac PC, Chromebook PC, tablet, mobile phones, and some
3 smart TVs, with device compatibility varying by service. This permits gamers to play
4 computationally demanding games on less powerful devices that otherwise lack the computing
5 power or storage to support the games.

6 **ANSWER:** To the extent the Complaint is quoting or characterizing from one or more
7 unidentified sources, Microsoft respectfully refers the Court to any such source for an accurate
8 and complete statement of its contents. Microsoft admits that cloud gaming has the potential to
9 broaden access to gaming by expanding the universe of devices that can play games. Microsoft
10 avers that it lacks knowledge or information sufficient to form a belief as to the truth of the
11 allegations concerning the features available on cloud gaming services other than those offered
12 by Xbox Cloud Gaming. Microsoft denies the remaining allegations contained in Paragraph 48.

13 49. **ALLEGATION:** In September 2020, Microsoft added cloud gaming to its top-
14 tier multi-game content library subscription service offering, Xbox Game Pass Ultimate. To date,
15 more than 20 million gamers have used the service to stream games from the cloud. Microsoft
16 has stated that cloud gaming subscription services are integral to its goal of expanding gaming to
17 3 billion gamers worldwide and enabling gamers “to play the games you want, with the people
18 you want, anywhere you want.”

19 **ANSWER:** Microsoft admits that Microsoft launched cloud gaming as part of the
20 Ultimate tier of its Game Pass subscription service in September 2020; and that more than 20
21 million gamers have used the service to stream games from the cloud. To the extent the
22 Complaint is referencing documents, Microsoft respectfully refers the Court to the documents for
23 an accurate and complete statement of their contents. Microsoft denies the remaining allegations
24 contained in Paragraph 49.

25 50. **ALLEGATION:** Other cloud gaming subscription services include Amazon
26 Luna, Nvidia GeForce NOW, and Google Stadia, although Alphabet Inc. announced that it
27 discontinued Stadia in January 2023. Amazon’s Luna+ (a tier of Amazon Luna), priced at \$9.99
28

per month with additional options available for further purchases, provides streaming access to a library of over 100 third-party games. Nvidia GeForce NOW, priced at \$49.99 for six months for the Priority tier or \$99.99 for six months for the RTX 3080 tier, allows gamers to stream game titles that they already own, with the streaming hosted on Nvidia Corporation (“Nvidia”) datacenters. Although it will soon be discontinued, Stadia Pro, priced at \$9.99 per month with additional options for further purchases, allows gamers to stream games from a library of hundreds of third-party games.

ANSWER: Microsoft admits that Amazon Luna and Nvidia GeForce NOW are other existing cloud gaming services, and that Google Stadia was another such service that was discontinued in January 2023. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning how these cloud gaming services price and host their services. Microsoft denies the remaining allegations contained in Paragraph 50.

C. Importance of AAA Games

51. **ALLEGATION:** AAA games are particularly important within the gaming industry. The term “AAA” is frequently used by industry participants to refer to highly anticipated games bearing similar characteristics: high development costs, superior graphical quality, and expectations of high unit sales and revenue, typically from a studio with large development and publishing teams, supported by extensive marketing and promotion. AAA content can act as “tentpole” content, where, as a consultant to Microsoft explained, it “lift[s] the entire tent” by attracting a wide variety of players to consoles and subscription services they would not otherwise use. Tentpoles are “pre-eminent acquisition and retention drivers.”

ANSWER: To the extent the Complaint is quoting from documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations concerning unidentified industry participants. Microsoft denies the remaining allegations contained in Paragraph 51.

1 52. **ALLEGATION:** In the words of one Microsoft executive, AAA games are
2 “blockbuster[s].” They are also not numerous. Phil Spencer, CEO of Microsoft Gaming,
3 estimates there are “probably 10 to 20 AAA games in a given... calendar year” compared to 300
4 to 400 console games.

5 **ANSWER:** To the extent the Complaint is quoting or characterizing testimony from an
6 investigational hearing of a Microsoft witness, Microsoft respectfully refers the Court to the full
7 testimony for an accurate and complete statement of its contents. To the extent the Complaint is
8 quoting from documents, Microsoft respectfully refers the Court to the documents for an
9 accurate and complete statement of their contents. Microsoft denies the remaining allegations
10 contained in Paragraph 52.

11 53. **ALLEGATION:** Production budgets for AAA games frequently exceed \$100
12 million, if not \$200 million, and development teams can include thousands of developers
13 working over several years. The high cost of AAA game development is driven by many factors
14 such as long development cycles and the scarcity of AAA-capable studios and talent.

15 **ANSWER:** Microsoft denies the allegations contained in Paragraph 53.

16 54. **ALLEGATION:** The gaming industry recognizes a limited top tier of
17 independent game publishers, sometimes referred to as the “Big 4” or simply the AAA
18 publishers: Activision, Electronic Arts, Take-Two, and Ubisoft. These publishers reliably
19 produce AAA games for high-performance consoles and collectively own a significant portion of
20 the most valuable IP in the gaming industry. These high-profile franchises include, for example,
21 *Call of Duty* (Activision), *FIFA* (EA), *Grand Theft Auto* (Take-Two), and *Assassin’s Creed*
22 (Ubisoft).

23 **ANSWER:** Microsoft admits that Activision, Electronic Arts, Take-Two, and Ubisoft are
24 sometimes referred to as the “Big 4”; and that they publish *Call of Duty* (Activision), *FIFA* (EA),
25 *Grand Theft Auto* (Take-Two), and *Assassin’s Creed* (Ubisoft), respectively. Microsoft denies
26 the remaining allegations contained in Paragraph 54.

1 55. **ALLEGATION:** Only a few other studios are typically credited with releasing
 2 AAA games. Epic Games, maker of Fortnite, a free-to-play game that is currently one of the
 3 most popular games in the United States, is sometimes viewed within the industry as a AAA-
 4 level publisher, such that industry participants will sometimes refer to the “Big 4 + Epic.”

5 **ANSWER:** Microsoft admits that Epic Games makes *Fortnite*, a free-to-play game
 6 released in 2017 that is one of the most popular games in the United States and the world; and
 7 that Activision, Electronic Arts, Take-Two, Ubisoft, and Epic are sometimes referred to as the
 8 “Big 4 + Epic.” Microsoft denies the remaining allegations contained in Paragraph 55.

9 56. **ALLEGATION:** Internally, Microsoft recognizes that an ongoing pattern of
 10 industry consolidation has led to less availability of third-party AAA gaming content over time.
 11 Despite significant growth in the gaming industry, the head of Xbox Game Studios has noted the
 12 “size and quality and the number of AAA developers continues to drop,” rather than increase.
 13 Creating a studio with the capability to produce AAA games requires scarce talent and is a
 14 capital-intensive endeavor.

15 **ANSWER:** To the extent the Complaint is quoting from documents, Microsoft
 16 respectfully refers the Court to the documents for an accurate and complete statement of their
 17 contents. Microsoft denies the remaining allegations contained in Paragraph 56.

18 57. **ALLEGATION:** Microsoft and Sony also produce AAA games. *The Elder*
 19 *Scrolls*, *Halo*, and *Forza* franchises are AAA games from Microsoft, while the *God of War*, *MLB*
 20 *The Show*, and *Spider-Man* franchises are AAA games from Sony.

21 **ANSWER:** Microsoft admits that Xbox produces the franchises *Elder Scrolls*, *Halo*, and
 22 *Forza*; and that Sony produces the franchises *God of War*, *MLB The Show*, and *Spider-Man*.
 23 Microsoft denies the remaining allegations contained in Paragraph 57.

24 58. **ALLEGATION:** Microsoft’s own experience with releasing AAA games reflects
 25 the cost and time to develop such content. Halo Infinite, a recent title from the Microsoft’s first-
 26 party Halo franchise, was in production for [REDACTED] years, and cost almost [REDACTED] million.
 27 Other AAA games may take even longer to develop. For instance, according to one Microsoft
 28

1 executive, [REDACTED], a forthcoming title from the [REDACTED] franchise, may take a
2 [REDACTED] to develop.

3 **ANSWER:** Microsoft admits that *Halo Infinite* was in production for [REDACTED] years and cost
4 approximately [REDACTED] million to produce. Microsoft denies the remaining allegations contained in
5 Paragraph 58.

6 59. **ALLEGATION:** Access to AAA content is crucial for Microsoft, and the
7 company strives to ensure that new AAA content is available on its console and subscription
8 services on a regular basis. In May 2022, Mr. Spencer of Microsoft warned leaders on the Xbox
9 team that Microsoft was facing “[REDACTED]” in failing to release “[REDACTED]
10 [REDACTED]” and it feels like we are likely to go through a
11 gap of almost [REDACTED] between big exclusive launches on our platform, Halo [I]nfinite being
12 our last on December 8th, 2021.”

13 **ANSWER:** Microsoft admits that it wants a variety of content available on Xbox and
14 Game Pass. To the extent the Complaint is quoting from documents, Microsoft respectfully
15 refers the Court to the documents for an accurate and complete statement of their contents.
16 Microsoft denies the remaining allegations contained in Paragraph 59.

17 60. **ALLEGATION:** AAA content has particularly important downstream effects
18 because it generates player interest, develops a base of users, and drives monetization
19 opportunities. As Microsoft’s CEO has explained, there is some gaming content that is needed on
20 a console or on a subscription service “in order for gamers to be attracted to purchase it.” As an
21 internal Microsoft document explained, players would abandon their preferred consoles to follow
22 their preferred games: “[i]f the content a player wants to play is only available on another
23 gaming platform, even the biggest Xbox fans will go to another platform to play the game.” An
24 internal strategy document on scaling Xbox Game Pass similarly observed that “[b]lockbuster
25 content has an outsized impact on a service growth, both acquiring new subscribers and reducing
26 churn, as illustrated by the recent impact of Grand Theft Auto.”

1 **ANSWER:** Microsoft admits that it is valuable to have a variety of content available on
 2 Xbox and Game Pass. To the extent the Complaint is quoting or characterizing testimony from
 3 an investigational hearing of a Microsoft witness, Microsoft respectfully refers the Court to the
 4 full testimony for an accurate and complete statement of its contents. To the extent the
 5 Complaint is quoting from documents, Microsoft respectfully refers the Court to the documents
 6 for an accurate and complete statement of their contents. Microsoft denies the remaining
 7 allegations contained in Paragraph 60.

8 61. **ALLEGATION:** To differentiate their products from rivals, console
 9 manufacturers and subscription service providers may seek to make certain titles exclusive to
 10 their products and unavailable on rivals' products, including by obtaining exclusive licenses
 11 from third-party game publishers. An internal Microsoft analysis estimates that an exclusive
 12 AAA release can meaningfully shift console share in the United States. Typically, exclusivity in
 13 this context does not prevent a game from being available for PC or other non-console devices.

14 **ANSWER:** Microsoft admits that gaming companies may make some titles exclusive to
 15 some platforms. To the extent the Complaint is referencing documents, Microsoft respectfully
 16 refers the Court to the documents for an accurate and complete statement of their contents.
 17 Microsoft denies the remaining allegations contained in Paragraph 61.

18 62. **ALLEGATION:** A diverse array of AAA content that increases adoption and
 19 engagement gives a console or subscription service greater leverage in attracting additional
 20 content. The console or subscription service can tout the size of its player base in negotiations
 21 with publishers and developers seeking to increase the discoverability and engagement of their
 22 content. As an internal Microsoft strategy document notes, "[t]here is a virtuous relationship
 23 between content and subscriber scale." The result of these dynamics is to generate competition
 24 among console manufacturers and subscription service providers for AAA content.

25 **ANSWER:** Microsoft admits that it is valuable to have a variety of content available on
 26 Xbox and Game Pass; and that the size of a platform's player base may be one of many factors
 27 used in negotiations with publishers and developers. To the extent the Complaint is quoting from
 28

1 documents, Microsoft respectfully refers the Court to the documents for an accurate and
2 complete statement of their contents. Microsoft denies the remaining allegations contained in
3 Paragraph 62.

4 63. **ALLEGATION:** Microsoft Xbox’s Chief Marketing Officer has emphasized the
5 importance of such content, noting: “we want to bet bigger on tentpoles (things we believe will
6 drive acquisition, engagement hours, and have talkable and shareable marketing value).”

7 **ANSWER:** To the extent the Complaint is quoting from a document, Microsoft
8 respectfully refers the Court to the document for an accurate and complete statement of its
9 contents. Microsoft denies the remaining allegations contained in Paragraph 63

10 64. **ALLEGATION:** Microsoft expects that Activision’s AAA content will drive
11 sales of Xbox consoles and Xbox Game Pass and increase active play of both Activision and
12 non-Activision games on Xbox consoles. As Mr. Spencer explained to Microsoft investors, “[a]s
13 our platform becomes more attractive, the flywheel of content creators and players accelerates.
14 As the creative range on our platform continues to expand, more players are attracted to the
15 service, and the growing scale of the customer base makes the platform more attractive for
16 additional publishers, and so on.”

17 **ANSWER:** Microsoft admits that Microsoft anticipates that Activision’s content may
18 help attract some new Game Pass subscribers to that service. To the extent the Complaint is
19 quoting from documents, Microsoft respectfully refers the Court to the documents for an
20 accurate and complete statement of their contents. Microsoft denies the remaining allegations
21 contained in Paragraph 64.

22 65. **ALLEGATION:** Activision content is especially valuable to any gaming console
23 or subscription service due to the ability of Activision games to drive sales and engagement.
24 Activision’s CEO Bobby Kotick testified that Activision’s games are “iconic” and “beloved.”
25 Microsoft, in presentations to its Board of Directors regarding this Proposed Acquisition, called
26 Activision’s content “legendary” and “world class ... across console, PC, and mobile.”

1 **ANSWER:** To the extent the Complaint is quoting or characterizing testimony from an
2 investigational hearing of an Activision witness, Microsoft respectfully refers the Court to the
3 full testimony for an accurate and complete statement of its contents. Microsoft avers that it lacks
4 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
5 testimony from an Activision witness. To the extent the Complaint is quoting from documents,
6 Microsoft respectfully refers the Court to the documents for an accurate and complete statement
7 of their contents. Microsoft denies the remaining allegations contained in Paragraph 65.

8 66. **ALLEGATION:** Activision currently has a combined 154 million MAU globally
9 across its console and PC games and the company expects this number to grow to over 250
10 million MAU by 2024. Activision’s statements reflect its ability to influence video game product
11 purchase decisions. When Activision and Nvidia negotiated over offering Activision games on
12 the Nvidia GeForce NOW cloud gaming subscription service, Activision stated “[w]e influence
13 players’ subscription decisions” and “[w]e influence hardware purchase decisions.”

14 **ANSWER:** Microsoft avers that it lacks knowledge or information sufficient to form a
15 belief as to the truth of Activision’s purported current or future numbers of monthly active users,
16 or as to the truth of Activision’s purported negotiations with Nvidia. To the extent the Complaint
17 is quoting from documents, Microsoft respectfully refers the Court to the documents for an
18 accurate and complete statement of their contents. Microsoft denies the remaining allegations
19 contained in Paragraph 66.

20 67. **ALLEGATION:** Even among AAA games, Activision’s most well-known
21 franchise, *Call of Duty*, is particularly strong. First released nearly twenty years ago in 2003,
22 *Call of Duty* is, in Activision’s own words, “one of the most successful entertainment franchises
23 of all time.” In 2021, *Call of Duty: Vanguard* topped the revenue charts as the best-selling game
24 in the United States, with *Call of Duty: Black Ops Cold War* coming in second. And in 2022,
25 *Call of Duty: Modern Warfare II* took in \$1 billion globally in the first ten days following its
26 launch. By comparison, the highest grossing film of the year so far, *Top Gun: Maverick*, took
27 one month to reach the \$1 billion threshold.

1 **ANSWER:** Microsoft admits that *Call of Duty* was first released in 2003. To the extent
 2 the Complaint is quoting from documents, Microsoft respectfully refers the Court to the
 3 documents for an accurate and complete statement of their contents. Microsoft avers that it lacks
 4 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
 5 the sales of different iterations of *Call of Duty* and the sales of *Top Gun: Maverick*. Microsoft
 6 denies the remaining allegations contained in Paragraph 67.

7 **THE RELEVANT ANTITRUST MARKETS**

8 68. **ALLEGATION:** The Proposed Acquisition will result in a combined firm with
 9 the ability and increased incentive to withhold or degrade Activision's valuable gaming content
 10 to undermine its competitors in multiple Relevant Markets. This anticompetitive behavior is
 11 reasonably likely to lead to reduced consumer choice, higher prices and/or lower quality
 12 products, and less innovation, and the Proposed Acquisition will not produce cognizable
 13 procompetitive effects sufficient to offset such harms.

14 **ANSWER:** Paragraph 68 purports to state conclusions of law to which no response is
 15 required. To the extent a response is required to these conclusions, Microsoft denies those
 16 allegations, except that it admits the proposed acquisition will result in a combined firm.

17 69. **ALLEGATION:** The Proposed Acquisition is likely to harm innovation, for
 18 instance, by decreasing the combined firm's incentive to optimize Activision's content for
 19 gameplay on rival hardware, thereby reducing the quality of consumer gaming experiences on
 20 competing products.

21 **ANSWER:** Paragraph 69 purports to state conclusions of law to which no response is
 22 required. To the extent a response is required to these conclusions, Microsoft denies those
 23 allegations.

24 70. **ALLEGATION:** The Proposed Acquisition is reasonably likely to substantially
 25 lessen competition or tend to create a monopoly in the Relevant Markets for High-Performance
 26 Consoles, Multi- Game Content Library Subscription Services, and Cloud Gaming Subscription
 27
 28

Services. The Proposed Acquisition is therefore reasonably likely to result in harm to both competition and consumers.

ANSWER: Paragraph 70 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

I. High-Performance Consoles are a Relevant Product Market

71. **ALLEGATION:** High-Performance Consoles are a Relevant Market for evaluating the likely competitive effects of the Proposed Acquisition.

ANSWER: Paragraph 71 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

72. **ALLEGATION:** The only High-Performance Consoles offered for sale today are the most recent generation of Microsoft Xbox and Sony PlayStation consoles—the Xbox Series X|S and the PS5. The Xbox Series X|S and PS5 are therefore included within the Relevant Market.

ANSWER: Paragraph 72 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

73. **ALLEGATION:** The third major gaming console available today, the Nintendo Switch, is highly differentiated from the Xbox and PlayStation consoles in significant ways. The Nintendo Switch, therefore, is not included in the Relevant Market.

ANSWER: Paragraph 73 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 73.

74. **ALLEGATION:** Microsoft's Xbox Series X|S and Sony's PS5 consoles are characterized by greater computational power, different content portfolios, different form factors

1 and technical specifications, generally higher prices, and different release cadences than the
2 Nintendo Switch and other handheld consoles.

3 **ANSWER:** Microsoft admits that Xbox, Sony, and Nintendo all currently offer
4 competing gaming consoles; and that different consoles offer different types of performance,
5 including varied graphical processing capabilities. Microsoft denies the remaining allegations
6 contained in Paragraph 74.

7 75. **ALLEGATION:** Superior computational power enables faster processing that
8 shapes the kind of content that can run on High-Performance Consoles, enabling higher
9 resolution, more realistic graphics, and cutting-edge performance. Both Xbox Series X|S and PS5
10 consoles have similar hardware, and Microsoft and Sony compete closely on hardware
11 innovation, including over graphics and performance. Conversely, Nintendo pursues a different
12 strategy of integrating its lower performance, portable hardware with its own distinctive first-
13 party games to appeal to player nostalgia for Nintendo's unique gaming experience over high
14 resolution, life-like graphics, and performance speed. While Microsoft's Xbox Series X|S and
15 Sony's PS5 consoles incorporate semi-custom systems-on-a-chip ("SoC") designed by AMD,
16 Nintendo's Switch runs on a non-AMD SoC that is more closely related to a mobile device
17 processor found in higher-end mobile phones and tablets.

18 **ANSWER:** Microsoft avers that it lacks knowledge or information sufficient to form a
19 belief as to the truth of the allegations concerning Sony's or Nintendo's business strategies and
20 the precise technical specifications of competitor devices. Microsoft denies the remaining
21 allegations contained in Paragraph 75.

22 76. **ALLEGATION:** Microsoft and Sony compete closely for high-quality, resource-
23 intensive AAA console games. They compete over genre coverage, portfolio size and quality,
24 and multiplayer game availability, and they routinely benchmark their content libraries against
25 each other. A substantial share of High-Performance Console content is available on both Xbox
26 and PlayStation consoles. By contrast, although Nintendo offers third-party content on the
27
28

1 Switch, Nintendo's main strategy centers on its own first-party games that are closely integrated
2 with its hardware.

3 **ANSWER:** Microsoft admits that console competitors offer overlapping gaming content
4 and that Nintendo offers third-party content on the Switch console. Microsoft avers that it lacks
5 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
6 Sony's or Nintendo's business strategies and the precise technical specifications of competitor
7 devices. Microsoft denies the remaining allegations contained in Paragraph 76.

8 77. **ALLEGATION:** Xbox Series X|S and PS5 consoles provide a technologically
9 advanced gaming experience from a stationary endpoint. The Xbox Series X|S and PS5 consoles
10 are plug-in devices that draw electrical power to support advanced computations and are
11 connected to an external display like a television. In contrast, the Nintendo Switch is a portable
12 battery-operated device with a built-in display screen, and it can optionally be connected to an
13 external display. Nintendo's Switch also has detachable controllers that can be used for motion-
14 based game play that is not available on the Xbox or PlayStation consoles. Microsoft and Sony
15 commonly benchmark against each other on price.

16 **ANSWER:** Microsoft admits that the Xbox Series X|S and PlayStation 5 consoles are
17 plug in devices that connect to an external display like a television, whereas the Nintendo Switch
18 console is a portable battery-operated device with a built-in display screen and detachable
19 controllers that can be connected to an external display; and that the Xbox Series X and
20 PlayStation 5 consoles are both priced higher than the Xbox Series S and Nintendo Switch
21 consoles. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to
22 the truth of the allegations concerning Sony's or Nintendo's business strategies and the precise
23 technical specifications of competitor devices. Microsoft denies the remaining allegations
24 contained in Paragraph 77.

25 78. **ALLEGATION:** The PlayStation 5 and the Xbox Series X, the companies' latest
26 flagship consoles, retail for \$499.99. By contrast, the Nintendo Switch retails for \$200 less at
27 \$299.99.

1 **ANSWER:** Microsoft admits that the Xbox Series X and PlayStation 5 consoles are both
 2 priced higher than the Xbox Series S and Nintendo Switch consoles. Microsoft denies the
 3 remaining allegations contained in Paragraph 78.

4 79. **ALLEGATION:** Since the 2000s, Microsoft and Sony have released new
 5 console generations largely contemporaneously—most recently in 2020. The prior generation
 6 (Generation 8) Xbox One and PlayStation 4 were released in 2013, and the current generation
 7 (Generation 9) Xbox Series X|S and PS5 consoles were released in November 2020. By contrast,
 8 the Nintendo Switch launched in March 2017, nearly five years after the beginning of the eighth
 9 generation.

10 **ANSWER:** Microsoft admits that Xbox and Sony released their most recent consoles
 11 (the Xbox Series X|S and the PlayStation 5, respectively) in 2020; and that Nintendo released its
 12 most recent console (the Nintendo Switch) in 2017. Microsoft denies the remaining allegations
 13 contained in Paragraph 79.

14 80. **ALLEGATION:** Microsoft’s own ordinary course documents regularly
 15 distinguish the closest potential substitute, the Nintendo Switch, from Microsoft’s Xbox Series
 16 X|S and Sony’s PS5 consoles. Microsoft conceded in a regulatory filing that Nintendo’s Switch
 17 is a “differentiated” console.

18 **ANSWER:** To the extent the Complaint is quoting from documents, Microsoft
 19 respectfully refers the Court to the documents for an accurate and complete statement of their
 20 content. Microsoft denies the remaining allegations contained in Paragraph 80.

21 81. **ALLEGATION:** Due to their distinct offerings, Microsoft and Sony consoles
 22 appeal to different gaming audiences than the Nintendo Switch. While Xbox Series X|S and PS5
 23 consoles offer more mature content for more serious gaming, Nintendo’s hardware and content
 24 tends to be used more for casual and family gaming.

25 **ANSWER:** Microsoft denies the allegations contained in Paragraph 81.

26 82. **ALLEGATION:** Indeed, “dual console owners” are more likely to own one
 27 High-Performance Console and a Nintendo Switch than two High-Performance Consoles. NPD
 28

1 Group, a trusted source for video game industry data, shows that as of 2020, nearly 40 percent of
2 PlayStation and Xbox owners also owned a Switch, while only 26 percent of PlayStation console
3 owners owned an Xbox and only 16 percent of Xbox console owners own a PlayStation.

4 **ANSWER:** To the extent the Complaint is quoting from documents, Microsoft
5 respectfully refers the Court to the documents for an accurate and complete statement of their
6 contents. Microsoft avers that it lacks knowledge or information sufficient to form a belief as to
7 the truth of the purported industry source estimates. Microsoft denies the remaining allegations
8 contained in Paragraph 82.

9 83. **ALLEGATION:** Other video gaming devices available today are not
10 commercially reasonable alternatives to High-Performance Consoles and are therefore not
11 included in the Relevant Market. These include gaming PCs, and mobile devices.

12 **ANSWER:** Paragraph 83 purports to state conclusions of law to which no response is
13 required. To the extent a response is required to these conclusions, Microsoft denies those
14 allegations.

15 84. **ALLEGATION:** Gaming PCs are distinct from High-Performance Consoles due
16 to differences in price, hardware, performance, and functionality (i.e., where and when a game
17 can be played), among other factors. Gaming PCs are therefore not included in the Relevant
18 Market. Mobile devices are distinct from High-Performance Consoles due to differences in
19 complexity and quality of game performance, content offerings, monetization approach,
20 gameplay and interface, and audience, among other factors. Microsoft recently confirmed this
21 factual distinction in testimony during the trial of Epic Games, Inc. v. Apple Inc., 559 F.Supp.3d
22 898, 981 (N.D. Cal. 2021). Mobile gaming devices are therefore not included in the Relevant
23 Market.

24 **ANSWER:** Paragraph 84 purports to state conclusions of law to which no response is
25 required. To the extent a response is required to these conclusions, Microsoft denies those
26 allegations. To the extent the Complaint is characterizing witness testimony from a trial in
27 another matter, Microsoft respectfully refers the Court to the full testimony for an accurate and
28

complete statement of its contents. Microsoft denies the remaining allegations contained in Paragraph 84.

85. **ALLEGATION:** High-Performance Consoles are a relevant antitrust market. However, although the Nintendo Switch is highly differentiated from the Xbox Series X|S and PS5 consoles, it shares many of the same characteristics that make High-Performance Consoles distinct from PCs, and mobile devices. Accordingly, the anticompetitive effects of the Proposed Acquisition alleged in this Complaint are also reasonably likely to occur in a broader market for gaming consoles that includes High-Performance Consoles and the highly differentiated Nintendo Switch.

ANSWER: Paragraph 85 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations. Microsoft denies the remaining allegations contained in Paragraph 85.

II. Multi-Game Content Library Subscription Services are a Relevant Product Market

86. **ALLEGATION:** Multi-Game Content Library Subscription Services are a relevant product market for evaluating the competitive effects of the Proposed Acquisition.

ANSWER: Paragraph 86 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

87. **ALLEGATION:** The Relevant Market for Multi-Game Content Library Subscription Services includes services that offer unlimited access to a library of video games that are predominantly played on non-mobile devices and are available to play at zero additional cost beyond the subscription fee, either via download or cloud streaming.

ANSWER: Paragraph 87 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

88. **ALLEGATION:** Microsoft is already a significant player in this market through its Xbox Game Pass offerings and continues to expand rapidly in this market. Microsoft offers

1 three tiers of Game Pass, each of which provide unlimited access to hundreds of games, with
2 Game Pass Ultimate also providing access to Xbox Cloud Gaming. Microsoft is already the
3 market leader with an announced 25 million Game Pass subscribers.

4 **ANSWER:** Microsoft admits that Microsoft has a multigame subscription service known
5 as Xbox Game Pass, which has three offerings and gives gamers access to a catalog of hundreds
6 of games; that Game Pass Ultimate provides access to Xbox Cloud Gaming, along with other
7 features; and that these combined Game Pass offerings currently have approximately 25 million
8 subscribers. Microsoft denies the remaining allegations contained in Paragraph 88.

9 89. **ALLEGATION:** Each service competes aggressively to offer the best, most
10 exciting titles to attract users to its service, with each attempting to provide access to a
11 compelling library of high-end, AAA games. Services offer a range of incentives to developers
12 and publishers including attractive revenue splits or co-marketing arrangements in order to
13 ensure games are available on their services.

14 **ANSWER:** Microsoft admits that gaming companies compete to improve their
15 platforms, including by offering multigame subscription services; that Xbox is working to
16 develop Game Pass into a better multigame subscription service; and that Microsoft attempts to
17 provide its users with a varied and rotating catalog of games. Microsoft avers that it lacks
18 knowledge or information sufficient to form a belief as to the truth of the other allegations
19 concerning unidentified industry participants and their business practices. Microsoft denies the
20 remaining allegations contained in Paragraph 89.

21 90. **ALLEGATION:** Multi-Game Content Library Subscription Services rely on
22 distinct pricing compared to the traditional “buy to play” model, where gamers purchase
23 individual games for up to \$70 per title, or more. Multi-Game Content Library Subscription
24 Services seek to offer a new method of accessing games by offering access to an entire library of
25 games for a periodic fee, rather than a single title for a fixed cost.

26 **ANSWER:** Microsoft admits that multigame subscription services are a different way to
27 pay for games than the traditional buy-to-play model; and that for some customers the multigame
28

1 subscription model may be cheaper than the buy-to-play model in some circumstances.
2 Microsoft avers that it lacks knowledge or information sufficient to form a belief as to the truth
3 of the allegations concerning unidentified industry participants and their business practices.
4 Microsoft denies the remaining allegations contained in Paragraph 90.

5 91. **ALLEGATION:** Subscription services in the Relevant Market closely track each
6 other's pricing and set their own prices accordingly. Microsoft's ordinary course documents
7 show that Microsoft closely monitors how competitors such as Sony are pricing their
8 subscription services. For example, Xbox CFO Tim Stuart sent an email comparing the prices
9 and services of the subscription tiers offered by Microsoft and Sony [REDACTED]

10 [REDACTED] Mr. Stuart went on to report: [REDACTED]
11 [REDACTED]

12 **ANSWER:** Microsoft admits that Microsoft considers a variety of factors in pricing its
13 products and services, including the pricing strategies of its competitors. Microsoft avers that it
14 lacks knowledge or information sufficient to form a belief as to the truth of the allegations
15 concerning unidentified subscription services other than its own. To the extent the Complaint is
16 quoting from and characterizing documents, Microsoft respectfully refers the Court to the
17 documents for an accurate and complete statement of their contents. Microsoft denies the
18 remaining allegations contained in Paragraph 91.

19 92. **ALLEGATION:** Buy-to-play games are not commercially reasonable
20 alternatives and therefore are not included in the Relevant Market. Multi-Game Content Library
21 Subscription Services provide immediate access to hundreds of game titles for a monthly fee,
22 facilitating content discovery. The pricing of individual games does not dictate Microsoft's
23 pricing decisions for its Xbox Game Pass subscriptions. Additionally, when speaking with third-
24 party game developers, Microsoft's executives tout Game Pass as additive, rather than as a
25 replacement for traditional buy-to-play games. Microsoft further showcases the additive nature
26 of Game Pass through public statements that report Game Pass subscribers invest more time and
27 money in gaming than their fellow gamers without a subscription.
28

1 **ANSWER:** Paragraph 92 purports to state conclusions of law to which no response is
2 required. To the extent a response is required to these conclusions, Microsoft denies those
3 allegations. Microsoft admits that some multigame subscription services provide users with
4 access to hundreds of games for fixed periods of time; and that multigame subscription services
5 can allow gamers to discover new content they may otherwise have missed or not purchased. To
6 the extent the Complaint is relying on documents, Microsoft respectfully refers the Court to the
7 documents for an accurate and complete statement of their contents. Microsoft denies the
8 remaining allegations contained in Paragraph 92.

9 93. **ALLEGATION:** Subscription services that focus on enabling online multiplayer
10 gaming, such as Xbox Live Gold and PlayStation Plus Essential, are not commercially
11 reasonable alternatives and therefore are not included in the Relevant Market. Xbox Live Gold
12 and PlayStation Plus Essential, as currently structured, award a limited number of free games as
13 “bonus content.” These services do not provide access to the same breadth and diversity of
14 content as Multi-Game Content Library Subscription Services and do not facilitate the same
15 level of game discoverability.

16 **ANSWER:** Paragraph 93 purports to state conclusions of law to which no response is
17 required. To the extent a response is required to these conclusions, Microsoft denies those
18 allegations. Microsoft admits that Xbox Live Gold and PlayStation Plus Essential offer fewer
19 game choices to subscribers than some other subscription offerings. Microsoft denies the
20 remaining allegations contained in Paragraph 93.

21 94. **ALLEGATION:** Subscription services that do not offer a library of video games
22 that are predominantly played on non-mobile devices are also not commercially reasonable
23 alternatives and therefore are not included in the Relevant Market. Mobile-native games are
24 distinct from games accessed natively on a console and from the most performant games
25 accessed natively on a PC, due to differences in complexity and quality of game performance,
26 monetization approach, gameplay and interface, and audience, among other factors.

1 **ANSWER:** Paragraph 94 purports to state conclusions of law to which no response is
 2 required. To the extent a response is required to these conclusions, Microsoft denies those
 3 allegations. Microsoft admits that in some circumstances mobile-native games can have different
 4 levels of complexity and game quality than console- and PC-native games. Microsoft denies the
 5 remaining allegations contained in Paragraph 94.

6 95. **ALLEGATION:** Multi-Game Content Library Subscription Services comprise a
 7 Relevant Market. The anticompetitive effects of the Proposed Acquisition also are reasonably
 8 likely to occur in any relevant antitrust market that contains Multi-Game Content Library
 9 Subscription Services, including a combined Multi-Game Content Library and Cloud Gaming
 10 Subscription Services market.

11 **ANSWER:** Paragraph 95 purports to state conclusions of law to which no response is
 12 required. To the extent a response is required to these conclusions, Microsoft denies the
 13 allegations contained in Paragraph 95.

14 **III. Cloud Gaming Subscription Services are a Relevant Market**

15 96. **ALLEGATION:** Cloud Gaming Subscription Services are a relevant product
 16 market for evaluating the competitive effects of the Proposed Acquisition.

17 **ANSWER:** Paragraph 96 purports to state conclusions of law to which no response is
 18 required. To the extent a response is required to these conclusions, Microsoft denies the
 19 allegations contained in Paragraph 96.

20 97. **ALLEGATION:** The Relevant Market for Cloud Gaming Subscription Services
 21 includes services that offer the ability to play predominantly non-mobile video games via cloud
 22 streaming.

23 **ANSWER:** Paragraph 97 purports to state conclusions of law to which no response is
 24 required. To the extent a response is required to these conclusions, Microsoft denies the
 25 allegations contained in Paragraph 97.

26 98. **ALLEGATION:** The Relevant Market includes Multi-Game Content Library
 27 Subscription Services that offer access to games via cloud streaming as well as any services that
 28

1 offer streaming via a “Bring Your Own Game” (“BYOG”) approach where users play games
2 they own in their own personal library by streaming those games through their Cloud Gaming
3 Subscription Service. In all cases, users pay a periodic fee, either monthly or yearly, to access the
4 Cloud Gaming Subscription Service.

5 **ANSWER:** Paragraph 98 purports to state conclusions of law to which no response is
6 required. To the extent a response is required to these conclusions, Microsoft denies the
7 allegations contained in Paragraph 98.

8 99. **ALLEGATION:** Cloud Gaming Subscription Services provide a way to play
9 games that is distinct from running them locally on the player’s gaming device. Such
10 subscription services make predominantly non-mobile video games available instantly on a wide
11 variety of devices, reducing the need for gamers to make large investments in expensive
12 hardware, such as a High- Performance Console or a gaming PC, and eliminating download
13 time.

14 **ANSWER:** Microsoft admits that cloud gaming may, provided certain conditions (such
15 as the availability of sufficient Internet access) are met, allow customers to stream some games
16 from the cloud rather than downloading them to play locally on their devices, including on
17 consoles, PCs, and mobile devices. Microsoft denies the remaining allegations contained in
18 Paragraph 99.

19 100. **ALLEGATION:** Cloud Gaming Subscription Services are designed to reach a
20 different set of consumers than other forms of game distribution. These subscription services
21 enable gaming on devices that do not meet the minimum specifications for large and
22 technologically complex games, such as older and less expensive PCs, MacBooks,
23 Chromebooks, tablets, mobile devices, and smart TVs. They also enable gamers to play games
24 that were developed for other devices and/or operating systems. Microsoft has estimated that the
25 total addressable market for cloud gaming is approximately 3 billion users, compared to 200
26 million console users.

1 **ANSWER:** Microsoft admits that cloud gaming allows customers to stream games from
2 the cloud that may have been developed for other devices or operating systems; and that this may
3 allow some consumers who are unable to afford more expensive devices to stream those games.
4 To the extent the Complaint is relying on documents, Microsoft respectfully refers the Court to
5 the documents for an accurate and complete statement of their contents. Microsoft denies the
6 remaining allegations contained in Paragraph 100.

7 101. **ALLEGATION:** Microsoft’s executives recognize the expanded opportunity
8 Cloud Gaming Subscription Services offer. For example, Microsoft executives have explained
9 that xCloud (now referred to as Xbox Cloud Gaming) offers “a visionary statement of the games
10 you want, with the people you want, anywhere you want,” and that, “you should be able to play
11 your games with who you want on the device you want, where you want.”

12 **ANSWER:** Microsoft admits that cloud gaming may allow some consumers who are
13 unable to afford more expensive devices to stream games they would not have been able to
14 without cloud gaming. To the extent the Complaint is quoting from documents, Microsoft
15 respectfully refers the Court to the documents for an accurate and complete statement of their
16 contents. Microsoft denies the remaining allegations contained in Paragraph 101.

17 102. **ALLEGATION:** Microsoft’s documents show that video game play by gamers
18 who use cloud gaming differs from that of gamers who do not. In a recap of insights and
19 learnings from FY2022, the Xbox Cloud Gaming team reported that “gamers who play a title
20 with cloud engage more, purchase more [downloadable content] and install more games than
21 their ‘lookalike’ peers” playing on console. Cloud gamers play approximately [REDACTED] more titles per
22 month, approximately [REDACTED] more days per month, and approximately [REDACTED] more hours per month,
23 all of which are “drivers of retention.”

24 **ANSWER:** To the extent the Complaint is quoting from documents, Microsoft
25 respectfully refers the Court to the documents for an accurate and complete statement of their
26 contents. Microsoft denies the remaining allegations contained in Paragraph 102.

103. **ALLEGATION:** Cloud Gaming Subscription Services also require specialized inputs. Cloud Gaming Subscription Services operate on cloud infrastructure, either by deploying their own dedicated infrastructure or by contracting with a third party. For example, Microsoft built Xbox Cloud Gaming by deploying racks of dedicated Xbox console hardware in Microsoft data centers, investing [REDACTED]. Microsoft has plans to [REDACTED] on its [REDACTED] in the future and expects to spend over [REDACTED] on Xbox Cloud Gaming infrastructure in the next several years.

ANSWER: Microsoft admits that Xbox made a significant investment in Xbox Cloud Gaming; and that Xbox Cloud Gaming is operated by using custom-built servers in Microsoft data centers to remotely run Xbox console games via Xbox's specialized console hardware. Microsoft denies the remaining allegations contained in Paragraph 103.

104. **ALLEGATION:** Cloud Gaming Subscription Services are a Relevant Market. The anticompetitive effects of the Proposed Acquisition alleged in this complaint are also likely to occur in any relevant antitrust market that contains Cloud Gaming Subscription Services, including a combined Multi-Game Content Library and Cloud Gaming Subscription Services market.

ANSWER: Paragraph 104 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies the allegations contained in Paragraph 104.

IV. The Relevant Geographic Market is the United States

105. **ALLEGATION:** The relevant geographic market in which to assess the Proposed Acquisition's effects is the United States.

ANSWER: Paragraph 105 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies the allegations contained in Paragraph 105.

106. **ALLEGATION:** In each of the Relevant Markets, consumer preferences and gaming behavior differ across countries. Internal research from both Microsoft and Activision

1 also finds significant variation among countries on metrics like average consumer spending on
2 gaming. For its most recent Generation 9 consoles, Microsoft differentiated its sales and
3 marketing strategy depending in part on the past sales performance of a given country. Given its
4 large installed base of Generation 8 consoles, Microsoft placed the United States into a strategic
5 “core and adequately resourced” tier of gaming markets for marketing purposes, along with only
6 two other countries. Microsoft has identified the United States as a “core” market, as it is the
7 leading High-Performance Console in this region.

8 **ANSWER:** Microsoft avers that it lacks knowledge or information sufficient to form a
9 belief as to the truth of the allegations concerning unidentified industry participants. To the
10 extent the Complaint is quoting from and characterizing documents, Microsoft respectfully refers
11 the Court to the documents for an accurate and complete statement of their contents. Microsoft
12 denies the remaining allegations contained in Paragraph 106.

13 107. **ALLEGATION:** Microsoft is a leader in the United States in the Multi-Game
14 Content Library Subscription Services market. As of the first quarter of 2022, [REDACTED] of its
15 Game Pass subscribers were located in the United States. As of the Microsoft offers Game Pass
16 at different price points outside the United States.

17 **ANSWER:** Microsoft admits that as of the first quarter of 2022, Xbox had 25 million
18 Game Pass subscribers, including a substantial number in the United States; and that Game Pass
19 prices vary in some locations. Microsoft denies the remaining allegations contained in Paragraph
20 107.

21 108. **ALLEGATION:** Microsoft and other Cloud Gaming Subscription Service
22 providers have similarly focused on the United States when choosing where to launch their
23 services. Microsoft launched Game Pass Ultimate first in the United States and Canada, with
24 Nvidia’s GeForce NOW and Amazon Luna undertaking a similar strategy. Cloud Gaming
25 Subscription Service providers also note that the proximity of cloud servers to gamers is
26 important in light of the technological demands of cloud gaming.

1 **ANSWER:** Microsoft avers that it lacks knowledge or information sufficient to form a
 2 belief as to the truth of the allegations concerning other industry participants. Microsoft admits
 3 that cloud gaming requires advanced technology and sufficient Internet services. Microsoft
 4 denies the remaining allegations contained in Paragraph 108.

5 **ANTICOMPETITIVE EFFECTS**

6 109. **ALLEGATION:** The Proposed Acquisition is reasonably likely to substantially
 7 lessen competition or tend to create a monopoly in the Relevant Markets by creating a combined
 8 firm with the ability and increased incentive to withhold Activision's valuable gaming content
 9 from, or degrade Activision's content for, Microsoft's rivals. The combined firm would have the
 10 ability to exclude Microsoft's rivals from access to some or all of Activision's content in the
 11 Relevant Markets. Microsoft would have the power to decide if, when, and to what extent
 12 Activision content will be available on competing products. The Proposed Acquisition is likely
 13 to increase entry barriers, thereby dampening beneficial rivalry and innovation. If permitted to
 14 make Activision a captive supplier, Microsoft would have a substantially increased incentive to
 15 engage in strategies to that would likely lead to reduced consumer choice, higher prices or lower
 16 quality products, and less innovation.

17 **ANSWER:** Paragraph 109 purports to state conclusions of law to which no response is
 18 required. To the extent a response is required to these conclusions, Microsoft denies those
 19 allegations.

20 **I. As the Owner of Activision's Gaming Content, Microsoft Would Have the Ability to**
 21 **Disadvantage Rivals by Withholding or Degrading Activision Content in the**
 22 **Relevant Markets**

23 110. **ALLEGATION:** AAA gaming content is a substantially important input for
 24 High-Performance Consoles, Multi-Game Content Library Subscription Services and Cloud
 25 Gaming Subscription Services, as these products use AAA content to attract and retain users and
 26 drive adoption. AAA content is difficult to produce given the intense resources and specialized
 27 competency required to develop these valuable games.

1 **ANSWER:** Paragraph 110 purports to state conclusions of law to which no response is
 2 required. To the extent a response is required to these conclusions, Microsoft denies those
 3 allegations. Microsoft admits that it is valuable to have a variety of content available on Xbox
 4 and Game Pass. Microsoft denies the remaining allegations contained in Paragraph 110.

5 111. **ALLEGATION:** Activision is a leader amongst an already limited number of
 6 developers able to produce such content through its cherished gaming franchises, including Call
 7 of Duty, Diablo, and Overwatch. As the owner of Activision’s gaming content, Microsoft would
 8 have the ability to disadvantage rivals by withholding or degrading Activision content in the
 9 Relevant Markets.

10 **ANSWER:** Paragraph 111 purports to state conclusions of law to which no response is
 11 required. To the extent a response is required to these conclusions, Microsoft denies those
 12 allegations. Microsoft denies the remaining allegations contained in Paragraph 111.

13 **A. AAA Content is a Substantially Important Input for Products in the**
 14 **Relevant Markets**

15 112. **ALLEGATION:** As discussed above, AAA gaming content is an important input
 16 for consoles and gaming subscription services. AAA games typically represent an outsized
 17 portion of revenue on these products and drive greater engagement and adoption.

18 **ANSWER:** Microsoft admits that it is valuable to have a variety of content available on
 19 Xbox and Game Pass. Microsoft denies the remaining allegations contained in Paragraph 112.

20 113. **ALLEGATION:** Microsoft’s own executives repeatedly emphasize the
 21 importance of such content. In a 2019 internal email, Xbox’s then-Chief Marketing Officer told
 22 Microsoft’s Mr. Nadella that Game Pass “must have [first-party] AAA games,” elaborating that
 23 Microsoft needs such first-party, AAA games to be “[n]ot just good, but great – ‘Sopranos’ or
 24 ‘House of Cards’ equivalents that make the world stop and take notice.” In a June 2020
 25 conversation between other Microsoft executives about Game Pass growth drivers, one aptly
 26 points out, “content is king.”

1 **ANSWER:** To the extent the Complaint is quoting from documents, Microsoft
2 respectfully refers the Court to the documents for an accurate and complete statement of their
3 contents. Microsoft denies the remaining allegations contained in Paragraph 113.

4 114. **ALLEGATION:** Similarly, Microsoft echoes the importance of AAA content on
5 its High-Performance Consoles. As one direct report to Mr. Spencer relayed to him, [REDACTED]

6 [REDACTED]
7 [REDACTED] During negotiations with top third-party publishers for inclusion of their games on Xbox
8 Series X|S, Microsoft internally noted that Activision “considers themselves ultimate
9 kingmakers” entitled to “share in platform economics.”

10 **ANSWER:** To the extent the Complaint is quoting from documents, Microsoft
11 respectfully refers the Court to the documents for an accurate and complete statement of their
12 contents. Microsoft denies the remaining allegations contained in Paragraph 114.

13 115. **ALLEGATION:** Activision’s powerful influence on gaming product adoption is
14 also borne out by its revenue share negotiations with [REDACTED]

15 [REDACTED]
16 [REDACTED] In one Microsoft executive’s words, Activision’s share on
17 Call of Duty is [REDACTED] and is [REDACTED]

18 [REDACTED]
19 **ANSWER:** Microsoft admits that in Microsoft’s current revenue-sharing agreement with
20 Activision, [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED] To the extent the Complaint is quoting from documents, Microsoft
24 respectfully refers the Court to the documents for an accurate and complete statement of their
25 contents. Microsoft denies the remaining allegations contained in Paragraph 115.

B. As the Owner of the Activision Content, Microsoft Would Have the Ability to Withhold Activision's Content from, or Degrade Activision Content on, Rival Consoles and Subscription Services

116. **ALLEGATION:** The Proposed Acquisition would give Microsoft total control over Activision's content, thereby giving Microsoft the ability to fully withhold Activision content from rivals, raise rivals' costs, change the terms and timing of access to Activision content, or degrade the quality of Activision content available for rival consoles and subscription services.

ANSWER: Microsoft admits that Microsoft is seeking to acquire Activision and its content. Microsoft denies the remaining allegations contained in Paragraph 116.

117. **ALLEGATION:** The Proposed Acquisition would give Microsoft the ability to engage in several strategies to degrade access to Activision content on rival consoles and subscription services, including timed exclusivity, exclusive downloadable content available only on Microsoft's products, and a variety of other means across the Relevant Markets.

ANSWER: Microsoft denies the allegations contained in paragraph 117.

118. **ALLEGATION:** Microsoft also would gain the ability to engage in tactics to degrade the quality of Activision content on competing consoles and subscription services and create a less desirable player experience for users choosing to play anywhere other than on Microsoft's products.

ANSWER: Microsoft denies the allegations contained in paragraph 118.

119. **ALLEGATION:** The Proposed Acquisition also would give Microsoft the ability to reduce efforts to optimize Activision content for rival products. Currently, Activision collaborates closely with gaming hardware manufacturers to ensure an optimal experience for gamers. For example, Activision collaborated with [REDACTED]

[REDACTED]
[REDACTED]

1 Should the Proposed Acquisition close, the combined firm will have the ability to reduce such
2 collaboration in the High-Performance Console Market.

3 **ANSWER:** Microsoft avers that it lacks knowledge or information sufficient to form a
4 belief as to the truth of the allegations concerning Activision's collaboration with other gaming
5 hardware manufacturers and the goals of that collaboration. To the extent the Complaint is
6 quoting from documents, Microsoft respectfully refers the Court to the documents for an
7 accurate and complete statement of their contents. Microsoft denies the remaining allegations
8 contained in Paragraph 119.

9 120. **ALLEGATION:** Activision also works to optimize its games, including Call of
10 Duty, to work on Nvidia's GPUs. A GPU (or Graphics Processing Unit) is a hardware
11 component that renders graphics for video games. Nvidia uses these GPUs in their datacenters
12 where games are hosted for cloud game streaming offered through Nvidia's GeForce NOW
13 service. Nvidia's GPUs support some of the most cutting-edge advancements for superior
14 graphics, including ray-tracing technology that allows graphics to take on a stunningly realistic
15 appearance. The Proposed Acquisition would give Microsoft the ability to reduce efforts to
16 optimize Activision content for hardware used by rival Cloud Gaming Subscription Services.

17 **ANSWER:** Microsoft admits that a GPU (or Graphics Processing Unit) is a hardware
18 component that renders graphics for video games. Microsoft avers that it lacks knowledge or
19 information sufficient to form a belief as to the truth of the allegations concerning Activision's
20 collaboration with other gaming hardware manufacturers, or concerning other industry
21 participants. Microsoft denies the remaining allegations contained in Paragraph 120.

22 **II. The Proposed Acquisition Would Increase Microsoft's Incentive to Disadvantage**
23 **Rivals by Withholding or Degrading Activision Content in the Relevant Markets**

24 121. **ALLEGATION:** If permitted to take control of Activision, Microsoft would have
25 an incentive to disadvantage rivals by withholding or degrading Activision content. Gaming is a
26 growing and lucrative market opportunity and one in which Microsoft is already well-positioned.
27 Microsoft already has a built-in incentive to promote its own products wherever possible, and it
28

1 fully understands the competitive power that owning Activision's leading gaming content would
2 yield.

3 **ANSWER:** Microsoft admits that gaming is a growing market with significant revenues.
4 Microsoft denies the remaining allegations contained in Paragraph 121.

5 122. **ALLEGATION:** Prior to the Proposed Acquisition, Activision sought to
6 maximize its profits from sales of its video game titles. The Proposed Acquisition would change
7 Activision's incentives, because Microsoft stands to gain significant profits from additional
8 gamers purchasing Xbox consoles or Xbox Game Pass. Hence, the combined firm will be
9 incentivized to disadvantage Microsoft rivals by withholding Activision content from, or
10 degrading Activision content on, rival consoles and subscription services to promote sales of
11 Microsoft's products.

12 **ANSWER:** Paragraph 122 purports to state conclusions of law to which no response is
13 required. To the extent a response is required to these conclusions, Microsoft denies those
14 allegations. Microsoft avers that it lacks knowledge or information sufficient to form a belief
15 about the truth of the allegations concerning Activision's intentions pre-acquisition. Microsoft
16 denies the remaining allegations contained in Paragraph 122.

17 123. **ALLEGATION:** While AAA content in general is important to competitors in
18 the Relevant Markets, Activision content is especially important because of its ability to drive
19 gaming product adoption and engagement by users.

20 **ANSWER:** Microsoft denies the allegations contained in Paragraph 123.

21 124. **ALLEGATION:** Activision's own documents point out the significant role
22 Activision content plays in consumers' choice of gaming products. In a 2019 presentation to

23 [REDACTED] Activision highlighted consumer survey data showing that [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27
28

1 **ANSWER:** Microsoft avers that it lacks knowledge or information sufficient to form a
 2 belief about the truth of the allegations about Activision's alleged presentation to [REDACTED] To the
 3 extent the Complaint is quoting from documents, Microsoft respectfully refers the Court to the
 4 documents for an accurate and complete statement of their contents. Microsoft denies the
 5 remaining allegations contained in Paragraph 124.

6 125. **ALLEGATION:** The Proposed Acquisition would reduce Microsoft's incentive
 7 to optimize Activision content for rival products, including via collaboration with Microsoft's
 8 rivals. Given the competition between Microsoft and Sony, the combined firm will have less
 9 incentive to collaborate with Sony to optimize Activision content for PlayStation. In addition,
 10 because Microsoft's Game Pass Ultimate competes against Nvidia's GeForce NOW, and because
 11 Microsoft does not use Nvidia GPUs in its own gaming consoles or Game Pass Ultimate
 12 datacenters, Microsoft would have a decreased incentive to optimize Activision content for
 13 Nvidia GPUs, potentially leading to poorer performance on rival Cloud Gaming Subscription
 14 Services, such as Nvidia's GeForce NOW.

15 **ANSWER:** Microsoft denies the allegations contained in Paragraph 125.

16 **III. Microsoft's Statements and Past Actions Indicate that It Will Likely Act on Its**
 17 **Incentives to Disadvantage Rivals by Withholding or Degrading Activision Content**

18 126. **ALLEGATION:** Microsoft stated in 2022 that it planned to make all future
 19 Activision titles exclusive to Game Pass. Microsoft subsequently has wavered in its
 20 representations as to its plans for exclusivity of Activision content post-merger on Game Pass.

21 **ANSWER:** To the extent the Complaint is relying on unidentified statements or sources,
 22 Microsoft respectfully refers the Court to those sources for an accurate and complete statement
 23 of their contents. Microsoft denies the remaining allegations contained in Paragraph 126.

24 127. **ALLEGATION:** Moreover, Microsoft's past conduct is telling. Despite
 25 statements by Microsoft to European regulators disavowing the incentive to make ZeniMax
 26 content exclusive post-close, after the EC cleared the transaction, Microsoft plans for three of the
 27 newly acquired titles to become exclusive to Microsoft's Xbox consoles and Xbox Game Pass
 28

1 subscription services. For example, although previous titles in ZeniMax’s *Elder Scrolls* franchise
2 were released on PlayStation, Microsoft has confirmed that the upcoming *Elder Scrolls VI* will
3 be available only on Xbox consoles, Windows PCs, and Xbox Game Pass subscription services.
4 Microsoft has also stated that *Starfield* and *Redfall*, two of the highly anticipated new games in
5 development at the time of Microsoft’s purchase of ZeniMax, will also become Xbox console
6 and Xbox Game Pass exclusives upon release.

7 **ANSWER:** To the extent the Complaint is referencing documents, Microsoft respectfully
8 refers the Court to the documents for an accurate and complete statement of their contents.
9 Microsoft admits that it acquired ZeniMax, the parent company of several studios, in 2021; that
10 following Microsoft’s acquisition of ZeniMax, several ZeniMax titles have been released on
11 PlayStation, including two new ZeniMax titles that were exclusive to PlayStation upon release,
12 as well as new updates of *Elder Scrolls Online* and *Fallout 76*; that *Redfall* was released on
13 Xbox, PC, and Game Pass day-and-date; that *Mighty DOOM*, a mobile game, was released on
14 iPhone and Android; and that some future ZeniMax games may be exclusive to Xbox, PC, and
15 Game Pass when they are initially released. Microsoft further avers that this approach is
16 consistent with Microsoft’s representations to the European Commission (“EC”), as the EC has
17 publicly stated. Microsoft denies the remaining allegations contained in Paragraph 127.

18 128. **ALLEGATION:** Microsoft’s previous representations to the EC about its
19 incentives after its purchase of ZeniMax were not borne out by Microsoft’s own post-merger
20 behavior. Instead, Microsoft put its true post-merger incentives on full display when it decided to
21 deny rivals its newly acquired future releases and thwart consumers who would choose to play
22 them on a competing product. Microsoft’s past behavior should also cast more suspicion on its
23 non-binding public commitments to keep *Call of Duty* available on PlayStation consoles through
24 the end of Activision’s existing agreement with Sony (i.e., through 2024).

25 **ANSWER:** Microsoft denies the allegations contained in Paragraph 128.

26 129. **ALLEGATION:** Microsoft is eager to further build upon its already significant
27 strength in gaming, with Mr. Nadella declaring publicly, “Microsoft’s all-in on gaming.”
28

Looking to reap the financial opportunity available in the gaming industry, Microsoft would be incentivized to withhold Activision content from, or degrade content on, rival products in order to disadvantage its rivals, thereby weakening competition and increasing its profits.

ANSWER: To the extent the Complaint is referencing documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 129.

130. **ALLEGATION:** Moreover, as Microsoft internally recognizes, acquisitions in this industry may contribute to a domino effect of further consolidation. This Proposed Acquisition—the largest ever announced in the gaming industry—poses a reasonable probability of further accelerating this trend.

ANSWER: To the extent the Complaint is referencing documents, Microsoft respectfully refers the Court to the documents for an accurate and complete statement of their contents. Microsoft denies the remaining allegations contained in Paragraph 130.

IV. Withholding Activision Content From, or Degrading Activision Content On, Microsoft’s Rival Products Will Harm Competition and Consumers in the Relevant Markets

131. **ALLEGATION:** Withholding Activision content from, or degrading Activision content on, Microsoft’s rivals’ products is reasonably likely to substantially lessen competition in the Relevant Markets.

ANSWER: Paragraph 131 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

132. **ALLEGATION:** This lessening of competition will result in harm to consumers, including reduced consumer choice, reduced product quality, higher prices, and less innovation.

ANSWER: Paragraph 132 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

LACK OF COUNTERVAILING FACTORS

133. **ALLEGATION:** Microsoft cannot demonstrate that entry or expansion in the Relevant Markets would be timely, likely, or sufficient to reverse the anticompetitive effects of the Proposed Acquisition.

ANSWER: Paragraph 133 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

134. **ALLEGATION:** Microsoft cannot demonstrate that the Proposed Acquisition would likely generate verifiable, cognizable, merger-specific efficiencies that would reverse the likely competitive harm from the Proposed Acquisition.

ANSWER: Paragraph 134 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

**LIKELIHOOD OF SUCCESS ON THE MERITS,
BALANCE OF EQUITIES, AND NEED FOR RELIEF**

135. **ALLEGATION:** Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission, whenever it has reason to believe that a proposed merger is unlawful, to seek preliminary injunctive relief to prevent consummation of a merger until the Commission has had an opportunity to adjudicate the merger's legality in an administrative proceeding. In deciding whether to grant relief, the Court must balance the likelihood of the Commission's ultimate success on the merits against the equities, using a sliding scale. The principal equity in cases brought under Section 13(b) is the public's interest in effective enforcement of the antitrust laws and ensuring the Commission is not deprived of the ability to order appropriate relief. Private equities affecting only Microsoft's interests cannot tip the scale against a preliminary injunction.

ANSWER: Paragraph 135 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

1 136. **ALLEGATION:** The Commission is likely to succeed in proving that the effect
 2 of the Proposed Acquisition may be substantially to lessen competition or tend to create a
 3 monopoly in violation of Section 7 of the Clayton Act and/or Section 5 of the FTC Act, and that
 4 the Merger Agreement and Proposed Acquisition constitute unfair methods of competition in
 5 violation of Section 5 of the FTC Act.

6 **ANSWER:** Paragraph 136 purports to state conclusions of law to which no response is
 7 required. To the extent a response is required to these conclusions, Microsoft denies those
 8 allegations.

9 137. **ALLEGATION:** Preliminary relief is warranted and necessary. Should the
 10 Commission rule, after the full administrative proceeding, that the Proposed Acquisition is
 11 unlawful, reestablishing the status quo would be difficult, if not impossible, if the Proposed
 12 Acquisition has already occurred in the absence of preliminary relief. Allowing the Proposed
 13 Acquisition to close before the completion of the administrative proceeding would enable the
 14 combined firm to, among other things, begin altering Activision's operations and business plans,
 15 accessing Activision's sensitive business information, eliminating key Activision personnel,
 16 changing Activision's game development efforts, and entering into new contractual relationships
 17 on behalf of Activision. In the absence of relief from this Court, harm to competition would
 18 occur in the interim.

19 **ANSWER:** Paragraph 137 purports to state conclusions of law to which no response is
 20 required. To the extent a response is required to these conclusions, Microsoft denies those
 21 allegations. Microsoft denies the remaining allegations contained in Paragraph 137.

22 138. **ALLEGATION:** Accordingly, the equitable relief requested here is in the public
 23 interest. The Commission respectfully requests that the Court:

- 24 1. Enter a temporary restraining order and preliminarily enjoin Microsoft from
 25 consummating the Proposed Acquisition, or any other acquisition of stock,
 26 assets, or other interests of one another, either directly or indirectly;

2. Retain jurisdiction and maintain the status quo until the administrative proceeding initiated by the Commission is concluded; and

3. Award such other and further relief as the Court may determine is appropriate, just, and proper.

ANSWER: Paragraph 138 purports to state conclusions of law to which no response is required. To the extent a response is required to these conclusions, Microsoft denies those allegations.

AFFIRMATIVE AND OTHER DEFENSES

Microsoft asserts the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of production, proof or persuasion where such burden rests on the FTC. Microsoft has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action.

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Complaint fails to allege a plausible relevant product market or markets.
3. The Complaint fails to allege a plausible relevant geographic market.
4. The Complaint fails to allege undue share in any plausibly defined relevant market.
5. The Complaint fails to allege any harm to competition.
6. The Complaint fails to allege any harm to consumers or consumer welfare.
7. The combination of Microsoft's gaming business with Activision's business will be procompetitive. The transaction will result in substantial acquisition-specific efficiencies, synergies, and other procompetitive effects that will directly benefit consumers. These benefits will greatly outweigh any and all proffered anticompetitive effects.
8. There will be no harm to competition, consumers, or consumer welfare because there is, and will continue to be, entry and expansion by competitors, which is timely, likely, and sufficient.

1 9. The alleged harm to potential competition is not actionable.

2 10. The FTC cannot provide clear proof that the combination of Microsoft's gaming
3 business and Activision's business would restrain trade in the alleged markets for "multi-game
4 content library subscription services" or "cloud gaming subscription services" because but-for
5 the proposed transaction, Activision's games would not be available on any such service.

6 11. The FTC fails to allege a time frame for the alleged anticompetitive effects.

7 12. The FTC is not entitled to relief because none of Microsoft's conduct identified in
8 the Complaint is actionable---independently or in the aggregate---under the antitrust laws.

9 13. Microsoft's offers of binding contractual commitments to continue to offer certain
10 titles like *Call of Duty* to other gaming companies, including Nintendo and Sony, for at least ten
11 years address all of the alleged anticompetitive effects in the alleged markets and ensure that
12 there will be no harm to competition or consumers.

13 14. The FTC's claims are too speculative to support any claim on which relief can be
14 granted.

15 15. The injunctive relief the Complaint seeks is inconsistent with the public interest
16 and the balance of the equities.

17 16. The FTC cannot show that Activision is likely to make its content available on
18 content subscription libraries or cloud gaming platforms but for the merger.

19 17. The FTC cannot show that Microsoft or Activision has market power with respect
20 to any relevant market.

21 18. The effects of the merger will be pro-competitive and this is in the public interest.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Microsoft respectfully requests that the Court enter judgment:

- 24 1. Dissolving the temporary restraining order;
25 2. Denying the FTC's request for injunctive relief;
26 3. Dismissing the Complaint with prejudice;
27 4. Awarding Microsoft costs and expenses incurred in defending this action; and
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1 5. Awarding such other relief the Court deems just and proper.
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Respectfully submitted,

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